THE COMMUNIST TRIAL

An American Crossroads

by
George Marion

By the same author:

BASES AND EMPIRE:
A Chart of American Expansion

THE "FREE PRESS":
Portrait of a Monopoly

ERRATUM:

Two remarks by District Judge Vincent L. Leibell are incorrectly attributed on page 63 to Judge Medina. The same quotations are reproduced in "Why This Book" preceding the title page.

The Communist Trial

The answer is in a letter by the author to a Protestant minister in Gilbertsville, New York.

REVEREND SIR:

Thank you for your obviously sincere letter, and permit me to reply with equal directness. You say: "It is my opinion that Judge Medina has bent over backward to give the defendants in the current conspiracy trial the fairest sort of treatment." What else *could* you think? You have been told the defendants and their lawyers behaved abominably and only the "saintly patience" of the Judge kept the trial going. But you have not been told the shoe is on the other foot.

Let me cite—from the very beginning of the pre-trial record going back to the summer of 1948—proof of the gross prejudice with which Judge Medina entered this case—and refused to leave it.

MEDINA: "That is the way we conduct our judicial proceedings in *this country.*" You have to bend over backward indeed to miss the inference that the defendants are agents of a foreign country—Russia. And again: "You'll get an *American* trial." Pages 20-22.

MEDINA: "If the difficulty has to do with this idea of overthrowing the government by force, public policy might require that the matter be given prompt attention. *There may be some more of these fellows up to that sort of thing.*" Page 126.

MEDINA: "Not involving *weasel words that they used,* if you interpret them to mean the overthrow of the government by violence, and they say they do not, *isn't there just some play on words there?*" Pages 130-132.

When pre-trial defense attorney Unger said: "There is not a word in the indictment alleging any acts committed by the defendants or by the Communist Party," page 139 shows:

MEDINA: *"No, they want to wait until they get everything set and then the acts will come."*

All this was before Judge Medina had been named trial judge. This was before any misconduct could have occurred: *it was before any of trial counsel for the defense had even been retained!*

Who provoked whom? Don't you think you'd better read my report from the record before you form an opinion?

THE COMMUNIST TRIAL

An American Crossroads

by GEORGE MARION

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The People in This Book

PRESIDING JUDGE: *Harold R. Medina.*

DEFENDANTS:

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and *Gus Hall.*

PROSECUTORS:

John F. X. McGohey, United States Attorney for the Southern District of New York.
Frank H. Gordon and *Irving Shapiro,* Special Assistants to the U.S. Attorney for the Southern District of New York.

Edward C. Wallace, Special Assistant to the Attorney-General of the United States.

Lawrence K. Bailey, Attorney, Department of Justice.

TRIAL COUNSEL FOR THE DEFENSE:

George W. Crockett, Richard Gladstein, Abraham J. Isserman, Louis F. McCabe, Harry Sacher and *Eugene Dennis,* who acted as own attorney.

Unger, Freedman and *Fleischer*: represented all the defendants in the preliminary stages of the trial; did not appear as trial counsel after above attorneys were retained. Briefs were filed in the case, at various times, by the American Civil Liberties Union, American Labor Party, National Law-

yers Guild and other organizations, as "friends of the court" interested in constitutional aspects of the case; they were represented, of course, by their own attorneys.

WITNESSES (for the prosecution):

Louis Francis Budenz, Herbert A. Philbrick, Frank S. Meyer, Eugene H. Stewart, Fred Cook, William O'Dell Nowell, Charles W. Nicodemus, Garfield Herron, Angela Calomiris, Thomas Aaron Younglove, William Cummings, John Victor Blanc, Balmes Hidalgo. (Other persons placed on the stand briefly for such technical purposes as authentication of a document.)

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Book One: Witness Number Eight

"Thou shalt not bear false witness against thy neighbor."
—*Exodus, 20:16.*

Chapter 1

THE PITTSBURGH INCIDENT

On January 10, 1948 a stockily-built man of 36 and a red-headed woman ten years younger were picked up by detectives on a street in downtown Pittsburgh. They said they had come to Pittsburgh two or three days earlier and were sharing a room in a local hotel. He gave his home as Cumberland, Maryland, and she said she lived not far from there in a community called Westernport. In her purse, the detectives found a nickel-plated .22-calibre pistol and, searching the hotel room thereafter, they uncovered an automatic revolver —a German Luger—in the man's suitcase.

Two indictments were thereupon returned by the local equivalent of a grand jury—the Alleghany County Inquest. The first indictment charged Charles W. Nicodemus and Louise Trail with carrying concealed weapons. The second said they carried the weapons "with intent unlawfully and maliciously to do injury" to some person unknown to the Inquest. The indictments said nothing more.

The newspapers manifested little interest in the matter. The published accounts show that the story received small space and the reporting was singularly inadequate. Our newspapers are not noted for their indifference to adultery, yet no Pittsburgh paper seems to have inquired whether Louise Trail was Miss or Mrs. or whether Nicodemus was married. No published account of the arrest contains any fact explaining the second indictment, that is, why the police believed that the weapons they carried were designed to do injury to some one rather than designed to enable them to stage a holdup, for instance. For that matter, there is no clue to the arrest itself; nothing indicates that attention was drawn to them by unusual conduct, an altercation or an accident. The papers seem to have been satisfied with a story all loose ends!

Available accounts do show these facts: 1. that in the course of routine procedure, Nicodemus and Miss or Mrs. Trail were photographed and questioned. 2. that the Trail woman said she was carrying a pistol because she was often out late at night. 3. that Nicodemus at first declined to comment but, on second thought, said he was a trade union (C.I.O.) organizer who had been "fighting the Communists." 4. that both were released after posting bail.

There is no further public record of this case until late May. On May 21, 1948, Pittsburgh papers recorded that Nicodemus and Louise Trail had been tried the preceding day. The brief account said they were "held not guilty but ordered to pay costs," an unusual combination which the papers do not explain. The five-paragraph news story indicates pretty clearly that the two were let off not because of any doubt about their guilt, but because Nicodemus was considered useful as an anti-Communist. The first paragraph sums up the idea thus:

"The claim by Charles Nicodemus, 36, of Cumberland, Md., that he carried a pistol because of threats from Communists won his acquittal late yesterday."

An anti-Communist is above the law. Nicodemus did not

and could not deny the charges, but as an anti-Communist he was excused from paying the full penalty for an acknowledged crime. There is more to this, however, than mere general sympathy of a magistrate for a professed anti-Communist. Right now anti-Communists are a dime a dozen. They do not receive rewards or exemptions for their mental attitudes alone. They must give something for something. The news story goes on to explain what Nicodemus had to offer in the police bazaar where he bargained for his liberty. He *"had cooperated with the FBI,"* detectives told the police magistrate, "while making investigations of 'Red' infiltrations in the plant" where he was employed (in Cumberland). In sum, the guilty couple escaped because the Federal Bureau of Investigation interceded for Nicodemus.

The case ends thus—with Nicodemus under pressing obligation to the FBI for his freedom—and eleven months pass. On Tuesday, April 19, 1949 at 4:10 p.m., a witness steps down from the stand in Room 110 of the Federal Courthouse at Foley Square in New York City. Though there are but twenty minutes left of the Court day, the next witness is called. He is a man wearing glasses so thick as to give him a sinister, Dr. Caligari-like air. Though we have never seen him in glasses, we easily recognize this solidly-built man with the thick crop of black hair as the same man shown in two photographs—front and profile—in the files of the Pittsburgh police over the "rogue's gallery" identification tag "53417, January 10, 1948." He is, of course, our old acquaintance, Charles W. Nicodemus.

Nicodemus is the eighth witness to mount the stand for the prosecution in the trial of eleven principal leaders of the Communist Party of the United States. They are charged with conspiring to "teach and advocate the duty and necessity of overthrowing and destroying the Government of the United States by force and violence." The reader will pardon me if I postpone further discussion of the origins of the trial or of the witnesses preceding Nicodemus. It is a question of pur-

pose: it is not my purpose to provide an index to the massive trial record with its tens of thousands of pages and millions of words of testimony and argument. I propose rather to keep myself—and the reader—from drowning in this sea of evidence by steadfastly clinging to the *meaning* of the trial. It is my belief that we will make more progress by following the path of one witness, than by pursuing a simple chronological record of the case. Let us, therefore, stick stubbornly to Charles W. Nicodemus for the time being.

Having sworn to tell the truth, the whole truth and nothing but the truth so help him God, Nicodemus testified for the remainder of the day. At the next court session, Friday, April 22, he resumed his testimony and later that day was turned over to the defense for cross-examination followed by re-direct examination. This consumed almost the entire day before he was dismissed, bringing his total time on the stand to one full day.

In the course of direct examination by Assistant United States Attorney Frank H. Gordon, Nicodemus testified that he had been a member of the Communist Party and had been especially active in the party from mid-1944 to January 1946. He was invited and permitted to relate alleged incidents that made sensational newspaper copy. There was one story of how, in 1945, when the work of the plant included war research, the Cumberland organizer of the Communist Party "ordered" members working in the Amcelle plant to make a detailed map of the plant showing entrances, exits and so on. Nicodemus did not claim he ever saw anyone making such a map or ever saw anyone giving the organizer such a map. Why shouldn't an organizer who has the power to give "orders" to party members, have the power to demand compliance or at least demand an explanation of non-compliance? (If, indeed, Communists give and take such orders, which is the impression this testimony is designed to convey.) Nicodemus was never asked about the map and never heard anyone else talk about it.

This testimony, moreover, casts dark suspicion on the Communist Party in general, but does not even purport to incriminate any defendant. Judge Medina admitted it into evidence on the ground that he "supposed" the prosecution would later show a "connection" with the defendants. Later, no connection having been shown, he ordered the story stricken from the record. With a straight face, he then instructed the jury to wipe the story from its collective mind. How a juror erases prejudice from his mind at the command of a judge, no lawyer has ever been able to explain to a layman. And aside from the jury, there is the public. It was Tuesday, April 19, when Nicodemus told the map tale. It was Friday, April 22, that the Court struck it out. And before he did so, the witness had already begun to relate a second lurid story of plotting and sabotage so that the jury could hardly have noticed the "elimination" of the first story. The newspapers certainly didn't notice it!

(Four months and ten thousand pages later, when defense lawyers introduced a rebuttal witness, Judge Medina would not permit them to ask the witness if he was ever asked to draw a map. The Judge correctly pointed out that he had stricken the map testimony from the record. But he put it this way: "I thought it was not properly connected and *I struck it out at once*"!)

The new and better story remained in the record and thus constituted Nicodemus' only contribution to the case. Just before Christmas, 1945, he said, Al Lannon, a Communist leader but not one of the defendants, attended a Communist meeting in Cumberland. Asked how a revolution to establish Socialism could hope to be successful in the United States, Lannon replied, according to Nicodemus, that the Red Army would intervene. He was very specific about it: the Red Army would strike via Alaska and Canada, destroying Detroit. He was not talking about bombing, but about mass invasion, Nicodemus swore. But let the record speak for itself on this major testimony of a minor witness.

(From the record)

NICODEMUS: It was pointed out that a revolution wouldn't be successful in the country without the help of the Red Army, and until the Soviet Union had consolidated its position in Europe that the hope of that couldn't be held very high.

GORDON: All right, did you say anything?

NICODEMUS: Yes, I did. I had a question in my mind and I asked Lannon how the Soviet Union could possibly ever invade the United States without a navy and Lannon pointed out to me as had been pointed out before that the Red Army in Siberia numbered some hundreds of thousands and was a strong force and that the Russians were constantly building it up and they had a good air force, they were building air strips, whenever the time come with air support the Russians could invade Alaska down through Canada and they could even destroy Detroit.

DEFENSE COUNSEL RICHARD GLADSTEIN: What was that?

JUDGE HAROLD R. MEDINA: They could even destroy Detroit, as I understood it. Did you say that?

NICODEMUS: That is what I said.

MEDINA: Why all of the defendants are smiling broadly.

DEFENDANT JOHN GATES: Why certainly we are.

DEFENDANT IRVING POTASH: Certainly we are.

MEDINA: We are getting back to that country club atmosphere again. Well, there isn't going to be any country club atmosphere in my court.

GLADSTEIN: When a man hears something that is ludicrous and absurd to the extreme I suppose he is permitted the human reaction of a smile of contempt.

MEDINA: That to me is the same line as some of the comments we have had in the past. It may seem very funny to the defendants. They seem to enjoy it, but I don't think it is, and their laughing is not going to have any effect.

GLADSTEIN: This is the Federal Court. I had expected a serious and sober effort on the part of the government, if it could, to prove the charges that have been made that a

political doctrine advocates the overthrow of the United States. But instead of that we are being treated to one after another of these witnesses, persons giving the same type of story we have heard from Congressman Rankin and J. Parnell Thomas.

* * *

You and I, in the calm of our homes, might find equal reason within Nicodemus' story, to dismiss it as nonsense. Two or three points capable of influencing even a steady reader of the Hearst press, rise to the very surface. First, it is generally understood by informed people—even informed anti-Communists—that Communist leadership is adult. The many documents introduced into evidence by the prosecution at Foley Square, show a group of men who study history, economics, and world affairs intensively; they draw up programs and plans on the basis of detailed—even tedious—analysis and discussion. How then can they be capable of the strategic idiocy Nicodemus describes?

Observe that Nicodemus—or whoever wrote his lines for him—is not indifferent to strategic questions: he takes note at the start that the Soviet Union has no navy for an invasion. Now if we are going to discuss strategy, we should note that no American military man of any responsibility believes that the Red Army can march to Detroit via Alaska or Canada, or carry out an airborne invasion of the United States in force. A *Reuters* dispatch from Fort Churchill, in Canada's Far North, to the *New York Times* of May 10, 1949, sums up the general American-British-Canadian understanding of the limited nature of Arctic military action.

"On the strategic side," it says, "the conviction is now fully established that large-scale warfare in the Canadian Arctic is an impossibility. . . . The military planners appear to have abandoned any thought of a full-scale invasion of North America across the Polar Region. On the basis of experience at Fort Churchill and elsewhere, they just do not think it could be done."

It must be remembered that the Russians have had much more experience of the Arctic than we have and have long known the limitations more recently verified by the United States. At any rate, no serious military student thinks the Red Army *thinks* it can stage a trans-Arctic invasion. Why then should anyone believe American Communists think so? Two of the defendants, for example, have fought in two wars —Spain and World War II. Both John Gates and Robert Thompson, at the age of twenty attained the rank of battalion commander in Spain; Gates was a parachutist in War II and Thompson, decorated for bravery in New Guinea, was recommended for the commission of captain. Others of the defendants are veterans of War II. There is no reason they should be considered capable of believing in the invasion that other soldiers reject.

Still, let us suppose this impossible invasion to be possible. Let us suppose the men in the Kremlin believe the Red Army can invade America; suppose, further, that they plan such an invasion. What follows? It follows that no one in the world but the men in the Kremlin would know it. The ability of Soviet leaders to keep a secret is pretty well established. Yet Nicodemus would have us believe that they shared this secret with several score leaders (Lannon was a member of a leading committee with, at various times, fifty to a hundred or more members) of the American Communist Party. And the thing doesn't end there. The leaders of this party, which is pictured by the prosecution and by this very witness as conspiratorial to a Hollywood extreme, are now said to have relayed this same top-secret military plan to every rank-and-file Communist in the United States. Not in code, mind you, but in casual direct reply to a casual direct question! And these rank-and-file Communists, veterans of lifelong industrial warfare, many of them veterans of World War II and even War I, are supposed to be such simpletons as to swallow this! Is it any wonder the defendants burst into laughter?

Chapter 2

THE WOMAN IN THE CASE

The laughter of the defendants was distinctly not music to the ears of Judge Harold R. Medina. He complained of the "country club atmosphere" but it was not really the dignity of his courtroom that he wished to maintain. By various comments he let it be understood that he did not want the jurors to see the defendants as ordinary human beings who laugh and, perhaps, on occasion even weep. That would endanger something other than his judicial dignity, namely, the horned-devil concept of Communism on which this trial depended. On one occasion, when defense counsel provoked laughter, Medina remarked with unconcealed bitterness:

"It would be just wonderful for the defense if we could get everybody laughing and giggling here and forget the seriousness of the charges that these men stand indicted for."

Well, we can agree with the learned Judge that Nicodemus' testimony, though nonsensical, is no laughing matter. We have weighed the words of the witness in the quiet of our homes, but a certain jury, hearing the same words in the unquiet of a certain courtroom, will not so readily dismiss it for the fable it is. How can they? Have they not been reading the headlines everyone else reads? And in the headlines, as in the reports of the House Un-American Activities Committee and the ukases of the Attorney General of the United States, the Communists have been repeatedly "convicted" before they set foot in court. In fact, they have been convicted of crimes far more serious than any they are charged with here!

No less a person than the President of the United States publicly referred to them as "traitors." Not long before the case was scheduled to go to the jury, Attorney General Tom Clark (then already confirmed by the Senate for appointment to the Supreme Court) boasted in a magazine article that the trial was part of the Department of Justice's "successful" drive against "avowed enemies of the country." And before the trial began, the defendants had been charged repeatedly, in open hearings where they had no opportunity to testify or to cross-examine the witnesses, with the crime of espionage. In such an atmosphere, even the testimony of a Nicodemus will not fall of its own weight. In anti-Communist trials anything goes; any stick to beat a dog.

The defense must, therefore, be conducted just as though Nicodemus' testimony were serious evidence. A serious attempt must be made to refute it. How? An obvious approach is to attack what the lawyers call the "credibility" of the witness, by exposing his relations with the FBI. In non-legal terms, the point is to show how the circumstances indicate that Nicodemus was likely to have been influenced by the FBI to give the testimony desired by the FBI rather than to describe events as the witness had actually experienced them.

Two newspaper clippings that tell conflicting stories give us a starting point. The previously quoted Pittsburgh news account suggested that Nicodemus had been cooperating with the FBI *before* his arrest. But while Nicodemus was still on the witness stand at Foley Square, a Cumberland newspaper, reporting his testimony, added a meaningful background fact it had gathered locally. The paper's story said:

"It was learned here today from reliable sources that Nicodemus had been working with the government *since an incident in Pittsburgh.*" (*Cumberland Evening Times,* April 20, 1949.)

This is a significant difference. If Nicodemus did no favors for the FBI before his arrest, his release was no reward for past services. For what then? Why not in return for the

promise to render some *future* service to the FBI or the Department of Justice (to which the FBI is attached)? You will see that this question might have decisive importance for a juror who must decide whether or not to believe the testimony of Charles Nicodemus.

Now suppose you were of counsel for the defense. You would wish to explore this question for the benefit of the jury. To that end, you would wish to put in evidence every fact that would suggest, to an American of ordinary acquaintance with the facts of American life, a "deal" between Nicodemus and the FBI. You would have to bring that evidence in, largely by way of cross-examination. And in order to be able to cross-examine Nicodemus, you would want to be fully briefed on his past. That would mean talking to everyone who knew Nicodemus in his home life, at work, in his trade union and at play. It would mean going to Cumberland, Maryland, where Charles Nicodemus lives with his second wife, the former Louise Trail.

Everything in Cumberland—this will be the first thing we learn—turns on the giant Amcelle plant of the Celanese Corporation of America. Even the incidents related by Nicodemus at the trial revolve about the low-lying buildings occupying forty-odd acres of the nearly eight hundred acres fenced in by Celanese. To understand the life and testimony of Charles Nicodemus, we must feel the power of the great corporation as Nicodemus felt it in August 1933 when he first went to work there. At that time there was no union at Amcelle, and Nicodemus learned, the hard way, what it means for each worker to make his own "wage bargain" with a giant corporation.

Celanese is a little too much of an opponent for one worker. A typical Wall Street corporation, it has spread over the entire continent since Christmas Day, 1924, when the Cumberland plant produced its first cellulose thread for making rayon. Celanese now produces its own chemicals near Bishop, Texas, and carries rayon-making from acetic acid to

finished cloth in a dozen or more plants of its own in the United States plus two in Mexico and two in Canada, aided by three research laboratories. The 1,000 employes of Celanese's first year grew to 23,000 in 1949 and the size of its business is indicated by the 1948 sales total of over $230,000,000. Its New York headquarters are not in Wall Street but in 1945 the J. P. Morgan investment affiliate and the firm of Dillon, Read and Company (which are definitely Wall Street) marketed a $40,000,000 stock issue for Celanese and recently $20,000,000 worth of bonds were sold in Canada to finance the building of a pulp plant there. The war helped fatten Celanese to Wall Street size: profits of the war years averaged over $7,000,000 a year. But the loot of the shooting war was as nothing to the booty of the cold war: in 1946 profits more than doubled the best war year! In two more years, the 1946 profit of over $16,000,000 had more than doubled again to $39,484,000—more than five times the peak war-year!

Of course our American mythology forbids us to say that this represents exploitation. Profits are supposed to be a thermometer of national health. Yet even if great profits garnered by a few industrial and financial giants somehow seeped down through the whole social structure, that wouldn't alter the basic problem of the industrial worker. The individual company's day-to-day struggle for profits spoils the individual worker's day-to-day life. It makes—it did as a matter of fact make—Charles Nicodemus the bitter enemy of Amcelle.

Take a simple instance. Sunday work was abolished ten years ago in the not-far-distant Meadeville plant of the American Viscose Corporation, itself no small concern. But there is still no Sabbath at Amcelle. In a recent strike where Sunday work was an issue, a strike bulletin put it this way: why should Celanese stop Sunday work when "it doesn't cost them any extra to disrupt your family and community life?"

More serious is the fact that the great plant, largest of Celanese properties, is operated with the objective of giving

management the greatest flexibility in maintaining low costs and high profits. This happens to entail laying off 3,000 workers on six holidays a year, including Christmas, without pay. The workers say: "Just when you need more pay, you get less!" It also entails total disregard for the continuity of the job on which all these workers depend for their very lives. As a company booklet informs the employes: business conditions or shortage of materials may necessitate "furloughs" at any time. (So many were the furloughs at the very time of the trial that the county sent out an S.O.S. for State and Federal aid!)

It won't be necessary to explain that Nicodemus and other Amcelle workers longed for a union. When the New Deal established a favorable climate, they set up a unit—Local 1874—of the CIO Textile Workers of America. Then they had to fight for recognition. The law said they had the right to organize, but they soon discovered that law or no law, the company was employing spies, "spotters," to weed out the active union fighters before they could get organized. The company also set up a company or fake union in opposition to the workers' own organization. Not until they went on strike in November 1936, under the guidance of men who did not rely on legal guarantees but showed them how to fight for their rights, did the workers force the company to bargain with them collectively through Local 1874.

The victory, and the changed conditions it brought, gave the union organizers great prestige. Nicodemus says those leaders—he named Arthur Schusterman and Boyd Coleman specifically—are Communists. He so testified at the trial of the eleven Communist leaders. In that case, the prestige of the common victory would have attached to the Communist Party and its leaders. That would explain why Nicodemus wanted to join the party.

Shortly after the strike, he swore on the witness stand, Schusterman asked him if he would like to become a member of the Communist Party and he replied that he would. By

February or March 1937, he was an active member and continued to be active until "around 1940." Some time in the spring of 1944, he declares he again became active and continued in the party until January 1946.

From the time Nicodemus joined the Communist Party of Cumberland until he left—and afterward, too, no doubt—he found the energies of the organization necessarily devoted largely to battles on the Amcelle front. There were Celanese strikes in 1939, 1940 and again in 1947, and incessant grievance engagements between strikes. The writing and distribution of leaflets; the day-to-day grievance procedures; the organization of picket lines and the constant fight to maintain them against police and court interference (so readily exerted at the request of big corporations); the building of strike-funds and the provision of relief for the children and wives of strikers; all the tedious routine that goes into the daily skirmishes in the endless war between owner and worker, between capital and labor, was the concern of the Communist group Nicodemus joined.

These local activities were supplemented by discussions, study, much emphasis on the necessity to master "theory." Such discussions tended to turn, at that time, on the distant battles in Spain as the center of the complex of world affairs. Nor were the discussions mere talk; they entailed activities —fund-raising for Spain, for instance. Perhaps the Cumberland Communists even provided a volunteer or two for the Abraham Lincoln Brigade that helped defend Madrid!

When Nicodemus testified later at the Communist trial, he was unable to remember any of this. As a newspaperman in Spain, I saw four to five thousand Americans, largely Communist Party members including the defendants Gates and Thompson, fighting in the ranks of the International Brigades. But Nicodemus does not remember Spain. Ordinary Amcelle workers saw known Communists fighting for them at Amcelle and acknowledged these services by electing to union office, year after year, the men Nicodemus identified

as Communists. Schusterman was president of the union in 1938 and held other offices in the Local; Coleman was president in 1946 and 1947. But Nicodemus cannot remember.

The life of Cumberland Communists, in the testimony of Nicodemus, is all of a piece with his story of the "invasion." The humdrum daily work finds no echo in it. It is all sensation, all melodrama about the Communist Party in Cumberland and, by inference, the Communist Party in general. Only thus, only obliquely, does it strike at the defendants themselves.

I have checked the testimony of Charles W. Nicodemus, word for word, against the recollections of many of his fellow-workers and neighbors and even relatives. What they have to say does more than contradict his testimony: it explains it. It fills in the gaps we had occasion to note earlier in the newspaper accounts of the "Pittsburgh incident." And as the story of Nicodemus' private and political life emerges, we see that his stories of Communist violence fit the pattern of his own life better than that of the organization he now hates.

From the time he says he joined the Communist Party until the day he was expelled, Nicodemus was the subject of much criticism and complaint. The general character of the criticism was that he was a man of undisciplined violence. It was said that his lone-wolf, tough-guy attitude tended to endanger the party and discredit the union. He liked to show visitors a knife, saying it was "just the thing to knock off those capitalist stooges." In 1938, at the Maryland-District of Columbia Industrial Union Council Convention, held in the State Armory at Cumberland, he brought an arms catalog with him. He had a trick of pulling out the catalog during the speeches and pointing out to his neighbors the price of certain machine-guns, by way of saying that a machine-gun should be used instead of all that talk. In 1939, he was bitterly opposed to settling the Celanese strike on the terms accepted and favored by the union and party. During the war he never reconciled himself to the no-strike pledge. Publicly he denounced it as a

fraud on the workers and privately he gave leadership to an underground movement against it. Some workers say members of the Nicodemus group damaged machinery in protest against "speedup." His mood is indicated by his own testimony that during this period he was "inactive" in the Communist Party which firmly upheld the no-strike pledge.

On his return to the party, he took no part in the fight to force the company, for the first time, to hire Negroes. The company's "patriotic" interest in high war production did not go so far as to induce it to fill up the gaps in its force by voluntary hiring of Negroes. It opposed this step—and so did Nicodemus.

Women workers were just as little to Nicodemus' liking. Non-Communist women in the plant came to known Communists to ask help. They said Nicodemus had organized a group in his department — the "downtrist" — to terrorize women workers by "accidentally" dropping crates on them. Filthy signs and lewd pictures were posted, they said. Called to account, Nicodemus maintained his position against both Communist Party leadership and trade union leadership. What that position was is interesting as showing the real content of a worker's life—Communist or non-Communist—as opposed to the melodramatic sketch furnished by Nicodemus.

Before 1937, the twisting operation that is part of the making of rayon yarn, was done on a machine called the "uptwist," apparently because the yarn travelled from the bottom of the machine to the top in the course of the operation. In 1937, an improved machine was tried; whatever its other characteristics, it reversed the course of the yarn and was therefore called "downtwist." This was the origin of the downtwist department.

Whenever a change of any kind takes place, union men know they have to watch out lest the company take advantage of the chance to divide the workers. That happened in this case. Men were transferred from uptwist to downtwist

as the new machines gradually replaced the old and the uptwist department became smaller and smaller; women were dropped it. It was argued that women couldn't lift the fifteen or sixteen pounds of yarn to the top of the machine. This was an appeal to the selfishness of the male workers, an invitation to them to fight for job security at the expense of the women. Later, under war conditions, not enough men being available, some women were drawn from the vanishing uptwist department to the downtwist, and the weight of the yarn proved no problem to them. Nevertheless, some of the "boys," as male hands in the department were called, under Nicodemus' leadership, set a date beyond which any woman coming from uptwist to downtwist would start without seniority, that is, as a new employe, though she might have worked side by side with the same men now in downtwist, for ten or fifteen years in the old department. In a layoff, she would thus be the first dropped.

A meeting was called. Nicodemus testified it was a party meeting; Schusterman and Coleman later testified it was an informal group of union leaders. According to testimony of all three, Coleman and Schusterman ripped into Nicodemus for this selfish, shortsighted stand which could split the union, make all the women of the community hostile to the union, and play into the company's hands. Nicodemus walked out on the meeting. At this point he was in bad with the men who had built the union and on the verge of expulsion from the Communist Party for violation of basic principles of conduct toward women workers and Negroes.

Nicodemus' private life was no better than his political life. His conduct toward his mother and toward his then wife, Irma, was a scandal to the neighbors. Irma was subject to a major chronic infirmity; during dangerous attacks of her illness, Nicodemus would walk out of the house, abandoning her. His own mother feared him and feared for him. She told friends about a gun and knife in his car and asked them to persuade him to discard the weapons. There were sugges-

tions in 1944 that Nicodemus needed weapons because he was making outside money in connection with an illicit enterprise, but in reality there was a more serious reason for his fear: Nicodemus was afraid of the return of a soldier with whose wife he had begun an unsavory affair.

The soldier was, of course, the husband of Louise Trail. When Irma and Louise were fired by Celanese after they had a fight in the Amcelle plant, the matter could hardly remain a secret. His sordid romance, and the fear of retribution, became the dominant elements of Nicodemus' life. Had he encountered the wronged husband in the street by some mischance, Nicodemus might have killed him out of fear and guilt. And his state of nerves affected his relations with everyone about him.

As might be expected, he quarreled even more bitterly with his comrades. The parting of the ways came on the question of jobs for Negroes. With V-E Day, "furloughs" became more frequent and the newest workers, according to union "seniority" principles, would go first. But now the Communists said—and this appears in Nicodemus' testimony—that there is a higher principle than seniority: the right of Negroes to keep the jobs denied them by discrimination until wartime. Nicodemus refused to support this policy; he fought it openly and viciously. During a union meeting later, he screamed that "no black bastard" would work in his department. Summoned to a disciplinary showdown at the home of some comrade, he says, he refused to go and thereafter never attended a Communist meeting.

The man who has wronged another must hate his victim. Nicodemus sought revenge on the Communists. In the flame of the cold war he found his opportunity: he became an active anti-Communist. By naming and denouncing Communists in a region and under conditions that amounted to "putting the finger" on them, he assisted a company-favored anti-Communist grouping to capture control of the union. In the process, the builders of the union were ousted from

office, though Schusterman, long an officer of the union, continued to be elected chairman of his department—the finished fabrics examination department—without opposition. Nicodemus fared better; he was rewarded with the post of auditor in the Local and made subchairman of his department. Something less than thirty pieces of silver, but a reward of the same kind.

Louise Trail's husband was home from the war, however, so Nicodemus and Louise now lived a guilty, furtive life despite his new "honors." They went armed like hunted things. That is why, when they made their trip to Pittsburgh in January 1948, she had a pistol in her purse and he had a Luger in his suitcase. And now at last we know that the "unknown" person threatened (according to the second indictment) with bodily harm, was—the betrayed husband!

This will help us to understand why Judge Medina moved heaven and earth later, to keep the name of Louise Trail out of the record. When Arthur Schusterman testified for the defense on August 30, he was not permitted to answer questions about her. Boyd Coleman followed Schusterman to the stand, and when asked who was present at a January 1946 meeting—the one Nicodemus described as the last Communist meeting he attended—Coleman named Schusterman, Nicodemus and "Nicodemus' girl friend, Louise Trail—"

(From the record)

McGOHEY: I object to the characterization, your Honor.

MEDINA: I don't know what I am going to do with these people, I swear. What on earth possessed you to bring that in, will you tell me?

COLEMAN: The question was who was there, your Honor.

MEDINA: Did some one of these lawyers tell you to put that in?

COLEMAN: No, they did not, sir.

MEDINA: Well, I will strike it out. This description of that woman as Nicodemus' girl friend was absolutely a gratuitous

thing brought in by the witness without any occasion at all. I won't have that sort of thing.

* * *

The lawyers protested the inference and Medina replied: "It is . . . only a few moments ago that I sustained objections about that woman that has just been named, and I won't have my ruling circumvented in that way." Later, still furious, he referred again to "characterization" by the witness and said if he "keeps doing it he may be sorry." The jury never did find out the real role of Louise Trail in this case.

Nicodemus' attempt to explain his gun to the Cumberland newspapers a few days after his arrest is rather sad. He said he "had expected trouble" with the Communists during the last negotiations with Celanese, had acquired a gun at that time, and simply forgot he had it. We need not waste time with this explanation. We know what we need to know: tangled in the web of his own crimes and immoralities, his personal and political indecencies, Charles Nicodemus had lost his freedom. He had become a prisoner of the FBI. He wishes us to believe his testimony is his own. "I am a voluntary informer," he argues, in effect. But volunteer or no, he was in no position to argue with the FBI. He was in no position to decide what he would or would not put in the statements he gave the FBI.

This, it is easy to understand, is what the defense must get across to the jury. It must help the average juror, the average American with his characteristic prejudices and illusions, to grasp the meaning of the facts we have presented about this one witness. Fair play demands an answer to the question: is Charles Nicodemus telling his own story or one dictated to him by the FBI? In the courtroom at Foley Square, the defense will try to get that answer. But it will try in vain. For, as we shall see, the Court will not even permit it to ask the question! Yet that, too, is an answer!

Chapter 3

FOLEY SQUARE

It is late in the morning of April 22, 1949. Attorney Harry Sacher is cross-examining prosecution witness Charles W. Nicodemus. The questions for some time have been directed toward Nicodemus' attitude with respect to Negro workers. This is the issue, Nicodemus concedes, on which he was expelled from the Communist Party. The proceedings begin to drag as Assistant Prosecutor Gordon objects to each question and his objections are monotonously sustained by Judge Medina. Without warning, Sacher abandons this matter and plunges into the "Pittsburgh incident" and its FBI sequel.

(From the record)

SACHER: Did you at any time have any conversation with an agent of the FBI in regard to the matters which you have testified to here today?

NICODEMUS: Yes, I have.

SACHER: When for the first time did you have such a conversation?

NICODEMUS: The first time was in about January—January of forty—let's see when was it. I want to get that clear. 1947 in January. About 1947 somewhere in January.

* * *

Now this sounds like an honest attempt to be as precise as the witness' memory will permit him to be. But the year is crucial. Was it 1947—*before* the Pittsburgh incident? Sacher

naturally pursued the matter further, definitely without encouragement from the Court.

(From the record)

SACHER: But do you know in what year it was?

NICODEMUS: Yes.

MEDINA: He said 1947.

SACHER: Are you sure it was 1947?

NICODEMUS: I beg your pardon, it is 1948.

SACHER: Yeah! . . . In what city did you talk to the FBI man?

NICODEMUS: In Cumberland.

SACHER: How far is Pittsburgh from Cumberland?

NICODEMUS: Around 160 miles I imagine.

SACHER: Do you remember making a trip to Pittsburgh in January 1948?

NICODEMUS: Yes.

SACHER: Did your conversation with this FBI man occur before you went to Pittsburgh or after you went to Pittsburgh?

NICODEMUS: With the FBI man, it occurred after.

SACHER: Yes. As a matter of fact, before you saw the FBI man you had pleaded guilty to an indictment in Pittsburgh for carrying concealed weapons, had you not?

GORDON: First we will let the witness answer and then I would like to make a statement on this subject.

MEDINA: Well, I think it is perfectly permissible to show a conviction of crime, if such be the fact. I will hear his testimony. Did you plead guilty to such a charge?

NICODEMUS: I did plead guilty.

SACHER: Did you also plead guilty to an indictment accusing you of carrying a revolver, an automatic pistol and other deadly weapons concealed on your person with intent therewith unlawfully and maliciously to do injury to another person?

NICODEMUS: I did not.

SACHER: I show you what purports to be a certified copy

of the indictment charging you with carrying a revolver, an automatic pistol on your person with intent unlawfully and maliciously to do injury to another person, and show you the reverse side of the indictment, and ask you whether this is a photostatic copy of a plea of guilty signed by you on May 20, 1948?

MEDINA: Is this the record of the judgment?

SACHER: Yes, your Honor, it is. It is a photostat certified by the court.

* * *

Sacher pointed out the guilty plea on the paper and asked the witness to read it, but Nicodemus said he couldn't make it out. The prosecution, backed by the Court, rushed to his aid to save the witness from acknowledging a fact obviously well known to him: that he had pleaded guilty to both indictments. This fact appeared on the court documents offered in both cases by the defense; so also did the fact that on May 20 he was permitted to withdraw his plea to both charges, was acquitted in both cases, was sentenced to pay costs in both cases. All of these facts, in their proper order, were essential to the defense objective, namely, to show that Nicodemus had been rescued from prison by the FBI in return for commitments to the FBI. But prosecution objections interrupted this presentation and the Court deliberately gave the jury to understand that the defense was trying to conceal the fact of acquittal. An unmistakable team-play by Judge and Prosecutor takes the edge off the cross-examination as the record continues:

(From the record)

MEDINA (to witness): . . . you say you pleaded guilty to that one?

GORDON (heading off witness): No, your Honor, he said he pleaded guilty to illegal possession, and that is all he remembers.

* * *

Medina tried again, and again Gordon prevented the witness from speaking.

(From the record)

GORDON: Maybe somebody stuck it in front of him and he signed it, but he says he pleaded guilty to illegal possession.

SACHER: Maybe there were two other guys there.

* * *

Having succeeded, at length, in getting the witness to identify his signature on the document in question, Sacher offered it in evidence. Before it was accepted by the Court, Gordon called the Court's attention to "an endorsement on here—"

(*From the record*)

SACHER: Just a moment.

GORDON (going right on): —and now—

SACHER: I object.

GORDON: —the plea is allowed to be withdrawn and a finding of not guilty is entered—

SACHER (protesting): Now, if it please the Court—

MEDINA (ignoring Sacher): I didn't see that at all.

SACHER: If it please the Court, there is signed there a plea of guilty by this witness, and that is why I want to offer in evidence—

MEDINA: You offered the whole paper. Do you object to it?

SACHER: . . . I asked him only whether his signature appeared under the plea of guilty, and that is what I am offering in evidence.

MEDINA: I can tell you right now that if in part of it he said he pleaded guilty and then the other part he says he withdrew the plea and he was adjudged not guilty, it is all going in.

* * *

When Sacher offered no objection to introduction of the whole document, Gordon nevertheless prolonged the argument in the presence of the jury.

(From the record)

GORDON: I object to his having brought the subject up in the first place. . . . As I understand the law, if a man has been convicted of a crime, you may show that as bearing upon his credibility—

MEDINA: Yes, and I understood this was the judgment of a conviction.

GORDON (continuing): —but if some subsequent action of the Court wipes that out, then it has always been my understanding of the law that that is not admissible; and to bring up the first part without the second part leaves me in a position where I can do nothing but say, we must now have the whole thing in.

MEDINA: All right.

GLADSTEIN: May I say something, in view of the statement Mr. Gordon made?

GORDON: Mr. Gladstein has no part of this, your Honor.

GLADSTEIN: Well, I have.

MEDINA: Mr. Gordon, you know, you get so excited. If you would only be calm, we could sit here and hear all this out. Go ahead, Mr. Gladstein. . . . Do you say this is a judgment of conviction or that this adjudges him not guilty?

GLADSTEIN: I say this, that the thing that affects this witness' credibility is that he went into court and pleaded guilty to the accusation contained in the document, and the fact that later on, as you, your Honor, know and lawyers know, for one reason or another arrangements were made to withdraw the plea of guilty, is immaterial to the plea of guilt.

MEDINA: Well, I will tell you what happens before me if a man pleads guilty and then I am convinced he is not guilty. I let him withdraw his plea and let him plead not guilty. That is the way it is done. This business of "making arrangements," where do you get that from?

GLADSTEIN: Why, if your Honor please, it is well known, and it happens all the time, that people are given opportunities on probation or otherwise to withdraw a plea of guilty

after they have pleaded guilty in fact and have been guilty in fact.

MEDINA: Well, it seems to me that it is a pity this subject was brought up at all, but now that it is here, in fairness to the witness the whole story is going to come out.

GLADSTEIN: That is exactly what we want.

* * *

The document was thereupon admitted in evidence and Gladstein asked permission to put a question to the Court.

(From the record)

MEDINA: You look so innocent, Mr. Gladstein, how can I refuse?

GLADSTEIN: . . . when a man pleads guilty in your court and you later feel he is not guilty, do you ever require him to pay the costs of the proceeding, if he is innocent?

MEDINA: Well, I never heard of that cost business here but they do have that in a good many parts of the country.

GLADSTEIN: But your Honor, they do that when a man is guilty.

MEDINA (furious): Well, I don't know about that. But I know when a judgment is a judgment of guilty, and when it is a judgment of not guilty, and I am going to look at this for a minute or two and I am going to tell the jury which one it is. You men can argue your heads off to the contrary but it is going to be just the way I say.

* * *

The proceedings continued in this spirit. After the Court had told the defense to read to the jury such parts of the document as it wished, and the prosecution any further parts it might desire, Sacher said he would read it all, if that was the Court's desire.

(From the record)

MEDINA: It seems to me there was a grave injustice done.

SACHER: There was no injustice done.

MEDINA: And there isn't going to be any while I am here.

SACHER: And there won't be any while we are here, because we are going to bring out all the facts—

MEDINA: You think you are.

SACHER: If the Court permits it.

MEDINA: If you think you are going to spend a few days going into seeing what he did and what he didn't do, you are mistaken.

* * *

Sacher thereupon read the document, beginning with the full text of the first indictment charging Nicodemus and Louise Trail with illegal possession of a revolver and an automatic pistol, continuing to the reverse side where under date of May 20, 1948 "appear the words, 'I or we plead guilty to indictment as returned,' bearing the signatures of Louise Trail and Charles Nicodemus." Under the same date and immediately beneath the guilty plea, appears the information that the plea is "allowed to be withdrawn by the Court," and next under that, "the defendants adjudged not guilty and pay costs by the Court," and finally—all bearing the same date—"Defendants sentenced to pay the costs of prosecution by the Court."

Judge Medina, misreading the cost figure as the trivial sum of $3.10, here sought to render the defense ridiculous by reading the sum before Sacher could. "And the costs are $3.10," he announced triumphantly, inviting the jury to feel that neither Nicodemus nor the judge in the case would be much concerned about the disposition of a cost-claim of that amount. This is a glaring instance of the Judge in the role of Prosecutor and what makes it stand out is—that the Judge was wrong!

He had tripped over a projecting fact: that the costs on this one charge were not the wholly insignificant figure of $3.10. They came to the substantial sum of $43.26. As it developed later, when the second document had been read after an equally tedious argument, costs on that charge were

shown to be $77.97. Thus Nicodemus and Louise Trail had been found "not guilty" but fined $121.23!

Page after dreary page of the transcript records Judge Medina's effort to belittle the effect of the evidence and to turn it against the defense before the defense was allowed to introduce it. When Sacher came to the second indictment, the prosecution returned to the argument that it was not admissible because the witness had been found not guilty. Once again, the Judge's remark that he was permitting it only "in fairness to the witness," provoked a colloquy.

(From the record)

GLADSTEIN: May it be made clear that in fairness to the defendants, in order to impeach the witness, that the whole story be brought out?

MEDINA: Mr. Gladstein, I think it is unfair to make it appear that the man was found guilty when he was not found guilty.

GLADSTEIN: Now if your Honor please—

MEDINA: Maybe that sounds absolutely bad to you, and it is probably some more judicial misconduct.

SACHER: Well, the point is—

MEDINA: When the record shows that the man was found not guilty, the least it seems to me that could have been made plain right from the beginning is that he was found not guilty.

GLADSTEIN: If your Honor please—

* * *

But the defense was not permitted to speak. The prosecution quickly moved for the noon recess and the Court recessed leaving the jury with nothing more on its mind than the Court's strong and repeated defense of the witness! The noon recess failed to improve the atmosphere in Judge Medina's courtroom. After the defense had read the second document to the jury, every attempt to explore the relationship between the Pittsburgh arrest and Nicodemus' subse-

quent appearance at the trial, only set the legal merry-go-round spinning.

(From the record)

SACHER: You testified that you saw an agent of the FBI in Cumberland after your visit to Pittsburgh, is that right?

NICODEMUS: That is right.

SACHER: You visited Pittsburgh from January 8 to January 10, 1948, is that right, is it?

NICODEMUS: No, wait, just a minute. I am trying to figure out here now when I did go back. I can't answer you right off. That is a long time ago. A lot of things happened.

* * *

Sacher tried to break through this stalling by recalling to the witness that the indictments recently shown him, said that he came to Pittsburgh on January 8 and was arrested on January 10. But the prosecution objected.

(From the record)

MEDINA: Sustained. You will ask no further questions about that incident. The record shows the man was found not guilty. If you think you are going to retry that case, you are making a mistake.

SACHER: I am not going to retry it. The record also shows he was sentenced to pay costs after he had already interposed a plea of guilty.

MEDINA: I will sustain the objection.

GLADSTEIN: Excuse me. Your Honor, I move that you strike the remark you have just made for the third time about what the record shows.

MEDINA: I deny the motion.

SACHER: Do you recall the date when for the first time you saw this agent of the FBI?

NICODEMUS: No, I don't recall the date, not the exact date.

SACHER: Was it in January or in February 1948?

NICODEMUS: Well, it was either in the latter part of January or the first part of February.

SACHER: Whom did you see in the FBI? What was the name of the agent you saw?

NICODEMUS: The name was Jones.

SACHER: What was his first name?

NICODEMUS: Raymond.

SACHER: Did you tell Mr. Jones that you had been arrested in Pittsburgh?

GORDON: Objection.

MEDINA: Sustained.

SACHER: Now, if it please the Court, I wish to show that it was pursuant to arrangement between this witness and the FBI that what happened on this exhibit took place. That is what I am directing my question to now.

GORDON: And I deny that the United States Government entered into any agreement with any Judge in Pittsburgh—

SACHER: Now if your Honor please—

GORDON (continuing): —to get this man out of any charge.

SACHER: I object to this.

GORDON: And I object to any further question . . . along this line.

MEDINA: I will sustain the objection to this particular question. I will pass on the others as they arise.

SACHER: How many times did you see Mr. Jones after this first occasion in the latter part of January or the early part of February?

NICODEMUS: Well, I imagine I seen Mr. Jones about three times, approximately, three or four times.

SACHER: When was the last time that you saw Mr. Jones?

NICODEMUS: The last time? You mean between the time that I was arrested and the time that I went back to Pittsburgh?

SACHER: When did you last see Mr. Jones, please?

NICODEMUS: Well, I have seen Mr. Jones, if you want to know how recently I have seen Mr. Jones—

MEDINA: That is what he is asking you.

NICODEMUS: All right. I have seen Mr. Jones a week ago.

For another half hour, Nicodemus twisted and dodged in an attempt to avoid specifying the dates of his meetings with the FBI agent. He acknowledged that he gave the agent two statements, a first, one-page statement in his own handwriting and a second, longer, typewritten one. For perhaps thirty minutes he maintained that one of them was delivered in 1949 or not earlier than September 1948, but at last made his first major admission: that he signed or initialled his first statement to the FBI some time in January 1948 *after* the Pittsburgh incident. This was two full years after he had been expelled from the Communist Party and shows that he did not "volunteer" his services to the FBI until he was in trouble.

Sacher now persisted, despite frequent adverse rulings, in bringing out the second date the witness so firmly disremembered.

(From the record)

SACHER: Now those were the only two statements that you made to him, is that correct?

NICODEMUS: Those are the only two.

SACHER: Now isn't it a fact that the second statement which you gave him was given to him prior to May 20, 1948, when you appeared in the Court of Quarter Sessions in Pittsburgh, isn't that right?

NICODEMUS: Before May, yes.

* * *

So it was that the defense extracted from Nicodemus, like a stubborn tooth, the admission that he made two statements to the FBI between the time of his arrest and the time of his release. His very effort to fix the dates first earlier and then later than May 20, exposes the guilty significance of the real dates: the statements were the price of his release. They committed him to tell on the witness stand those stories the FBI desired him to tell and that he had in fact told on direct

examination. The sequence of events is damning. Sacher therefore made Nicodemus repeat his admission.

(From the record)

NICODEMUS: I just told you that I gave Mr. Jones two statements that I can recall. One statement I gave him after I had been arrested in Pittsburgh, and the next statement I gave him some time after, prior to the time I had went to Pittsburgh to stand trial.

* * *

It had taken a whole day to wring from this witness a simple sequence of events that must, by the nature of the events, have made so deep an impression upon him that he could never forget it. 1. He had been arrested and faced serious charges. 2. An FBI man came to his home. 3. He next went to the FBI man's office where he made or delivered a statement. 4. He made another visit to the same office and delivered a further statement. 5. Only after that was he permitted by a Pittsburgh court to withdraw a guilty plea to two charges and get off with costs amounting to a moderate fine. 6. A week before he took the stand at the Communist trial, he had again seen the same FBI man.

To anyone with experience in criminal practice, it is all too clear: the witness was in the power of the FBI and, immediately preceding the present trial, was given a last rehearsal of the story he was ordered to tell. But as the cross-examination ended and redirect examination began, the Court once more refused to permit this to go to the jury for its consideration. The acquittal of Nicodemus in Pittsburgh was all the jury need know, said Medina in a last and furious colloquy about this issue. Over defense objection, he permitted the prosecution to ask questions he had specifically refused to let the defense put to the witness:

(From the record)

GORDON: Did Special Agent Jones of the FBI make any

representation to you that he would get you out of this Pittsburgh charge?

NICODEMUS: No, sir, he didn't.

GORDON: Did you give him these statements in return for any suggestion of that kind?

NICODEMUS: No, I did not.

GORDON: When was the first time that you talked to me about being a witness in this case?

NICODEMUS: That was around Thanksgiving of 1948.

GORDON: That was after the case in Pittsburgh had been dismissed?

SACHER: I object to that as assuming a state of facts not in evidence.

MEDINA: Not in evidence that they found him not guilty?

SACHER: No, they sentenced him to pay costs, I say to your Honor.

MEDINA: You know, Mr. Sacher, you can go on saying that till Kingdom comes, and every time you say he was sentenced to pay costs, I will say to the jury he was found not guilty.

SACHER (pointing to document in his hand): It says here he was sentenced to pay costs.

MEDINA: It says he was found not guilty.

SACHER: It says that he was sentenced to pay costs.

MEDINA: And it says that he was found not guilty.

SACHER: It doesn't say that.

* * *

Other lawyers on both sides joined in this nursery round and Medina poured visible hatred on the defense counsel who had dared to stand up against his interpretation.

(From the record)

MEDINA: Maybe the jury will forget what I tell them and maybe you will induce them to disregard the instructions of the Court, but not while I still have breath in me.

GLADSTEIN: I want to assign that, your Honor, as judicial misconduct.

MEDINA: That is fine, fine, fine.

GLADSTEIN: And also, in connection with your Honor's statements that you will continue to tell the jury that the case in which Mr. Nicodemus was involved turned out as not guilty, would you be good enough to add, if you tell the jury that, that it was no doubt because Mr. Nicodemus was innocent that the Court imposed a sentence of $140?

* * *

You and I are not lawyers. We cannot say from our own experience where the truth lies in this controversy concerning the legal proprieties. But as laymen we are perfectly competent to judge the real issue. The Court says it doesn't know anything about "this business of 'making arrangements.'" It will not admit the possibility that Nicodemus was brought to court by the FBI in return for a little service rendered him in Pittsburgh.

Well, well, well! It is inspiring to know that Harold R. Medina who not only practiced law for many years before President Truman appointed him to the bench in 1947, but *taught practice* to thousands of students at $35 each, has not so much as heard of a "deal." It is nice to know that even now, rounding out forty years of practice, he has never heard of a "fix." He has kept his very, very pure ideals through all these years of very, very prosperous practice. Bravo, Judge Medina!

We cannot, however, give Judge Medina what teachers call "alertness credit." For he was practicing law in New York city during Judge Seabury's investigation of the Magistrates' Courts there, and he was in practice when the Wickersham Commission published the results of its nationwide inquiry. Yet he never heard of a "fix." The Wickersham Commission did; Judge Seabury did. Perhaps we had better take time out right now to tell this very, very pure young man how very, very impure a court can be.

Chapter 4

THE "FIX"

The police court is "the underworld of the law." It is the habitat of various forms of insect life including "the shyster lawyer, the stoolpigeon, the bailbond shark, and the official grafter who accepts a split of the lawyer's fee or the bondsman's fee."

So says Ernest Jerome Hopkins—we will identify him in a minute—from long and nationwide experience. Stand "in the corridor of any typical police-court building from eight to ten o'clock any morning in the year," he suggests. "You may learn to identify the various 'runners' and 'fixers,' trace the transactions between shysters and bond agents and certain policemen and court attachés. . . . You will feel without a doubt that you are in the 'underworld'. . . . It is not merely because police courts are housed in buildings almost invariably old and dirty; I have seen police courts and police jails transferred to new and spotless buildings, and within a week, by some peculiar magic, they looked as pediculous as of old. Social agencies have thrown up their hands at the problem. . . . Normal citzens avoid these places. The Halls of Justice are left to the police, the 'runners' and the 'fixers.'" So much so that the only outsiders habitually present are a queer kind of neurotic known to reporters as "carrion crows." This is the Pittsburgh police court, the New York police court, the American police court. This is the "police-fostered underworld."

It is a world unknown to the Judge at Foley Square. The Court and prosecution there operate on a high moral plane.

From the mountaintop of pure legal theory, they deny the possibility of a "deal" between the FBI and a criminal, followed by a "deal" between the FBI and a police court. They gasp in horror at the defense suggestion of a "fix." They will not let the sins of the real world mar the sainthood of the FBI—or explain the presence in the courtroom of the witness Nicodemus.

The atmosphere up here is so thin that we had better get down to earth before we go back to Foley Square. The Wickersham Commission did not operate in that sinless, saintly world inhabited by Medina and Gordon. Fully as respectable as Judge Medina—it was appointed by then President Herbert Hoover and headed by George W. Wickersham, Wall Street law partner of another Republican President, the late William Howard Taft—it got right down to the dirt and lice of the police court. Ernest Jerome Hopkins, a veteran police reporter and Wickersham investigator, sums up its many-volumed findings and reports in a valuable book, *Our Lawless Police*. That is the source of the above quotations.

But Hopkins has much more to say about the "fix." In the average police court, he says, it is customary for the prisoner to be relieved of all he has in return for a suspended sentence or other form of release. The Wickersham Commission verified this throughout the United States. Testimony taken before Judge Seabury in a famous public investigation in New York City—while Harold R. Medina was practicing law there—brought it out in ugly detail. From that investigation, Hopkins cites examples: a man arrested had just been denied bail by a judge when (in the victim's own words) "a short, stocky, dark fellow came in and said: 'You get me $70 and I will take you out on bail.'" He scraped up $60 and "the judge obligingly reversed himself and granted bail. . . . An entirely innocent woman paid $500 for bail. From one girl, repeatedly arrested, an attorney refused $300, saying he had to pay the judge and that the arresting offcer wanted too much money. On her next arrest the same lawyer wanted $400. Later, $300

was asked by still another attorney, with the statement that $100 was for the policeman and $100 for the judge." Only the fact that this system is standard would explain the fortunes amassed by certain New York policemen. Judge Seabury learned that one cop and his mother had deposited $185,000 in five years! And the Wickersham Commission found that this, far from being peculiar to New York, was a nationwide condition.

But there is still another kind of "fix" that fits our case even more closely. Our witness, Nicodemus, has reluctantly acknowledged under cross-examination that he made "statements" to the FBI man who was his "contact." He is, in short, an informer, or, in the uglier police terminology, a stoolpigeon. Some stoolpigeons get paid in cash: several of Nicodemus' fellow-witnesses testified they received monthly fees (usually not very impressive in size) plus expenses. But the usual payment of the informer is immunity—a "fix" for some crime he has committed or protection in some racket he conducts. Hopkins describes it as "the indirect compensation of police protection, or immunity" from the legal consequences of "indulgence in some form of degeneracy or crime." He says, "That is the compensation usually extended."

Captain Michael Fiaschetti affirms Hopkins' statement—in his own barroom English. Head of the brutal New York Italian Squad until he got tough with a politically-protected lawyer, Fiaschetti has told his story in a book, made mildly literate by police reporter Prosper Buranelli, *You Gotta Be Rough.* Describing the exact type of "fix" evident in Nicodemus' case, he tells how he caught a young fellow who, in the summer of 1921, tried to hold up an East Side druggist. The lad was desperately broke, he had no gun, but "it was serious enough to mean about ten years. . . . I made a dicker with him. . . . Freedom for information . . . that was the bargain. It's been done before and it will be done a few times more before the world has gone straight. . . .

"Valuable merchandise, freedom. There's an idea around

that stoolpigeons get cash. That's mostly rot. I've never heard of a case where a squeal got anything like real dough from the police. . . . For the most part you do your bargaining with that precious commodity freedom. . . . Sharp practice, you might call it. I've never read any moral or improving book on the ethics of trading freedom for information."

Thanks, Captain Fiaschetti. There's the odor of degeneracy about your explanation, but at least it is not mixed with the smell of hypocrisy that haunts Foley Square. It is not hard to understand Judge Medina's reluctance to let the facts of life into his courtroom. He is trying a case that smells of Fiaschetti-morality; ten thousand Fiaschetti's prepared this case. It is not just Nicodemus who must be shielded from the rays of reality. Of thirteen witnesses placed on the stand by the government, two were FBI Special Agents—that is, regular FBI employees; seven, in addition to Nicodemus, were FBI "plants" who, unlike Nicodemus, were boldly presented as "undercover agents" or informers for the FBI; even the three remaining witnesses bear the stoolpigeon stamp: they were paid in the American police equivalent of thirty pieces of silver—jobs and immunities.

The FBI itself talks publicly of these things, making it still harder for Judge Medina to keep the jury in that never-never world of his own creation. In an inspired article in the July 8, 1949 issue of the weekly *U.S. News and World Report,* the FBI admits that it deals with and employs criminals not only on occasion but systematically. It concedes that it furnished "underworld" characters as witnesses for the prosecution in this case and it says FBI Chief J. Edgar Hoover is frankly worried that exposure will frighten his pigeons away.

"It [the FBI] finds that it is winning its lawsuits at the expense of its underworld contacts," said the article. "It sacrificed seven of its agents inside the Communist Party when it brought them to the witness stand in the trial of eleven Communists in New York. And it is losing more as a result of showing its files in the Coplon case."

Judge Medina refused defense demands to produce FBI reports admittedly submitted by Nicodemus and other informers. But in the Hiss and Coplon cases, the Court declined to cover for the agency. And so, as the article plaintively observes, "much of the mystery has been stripped from the FBI. A public illusion that the agency depended solely upon science to solve crimes, has been shattered." Aside from its bad effect on the general public, the lifting of the mystery has a fatal effect on the underworld. The live stoolpigeon is a dead duck the minute he is brought into the daylight. His business is dirty and secrecy is indispensable to it. The current trials have penetrated the FBI's secret places. "No one knows when a court will order the FBI files opened again to public inspection." So, since the trials, "one after another, FBI undercover agents have been dropping away." The FBI no doubt exaggerates; it probably has a stranglehold on many of its informers. But it is certainly worried, for there is one undeniable truth in this complaint: the FBI would be helpless without underworld agents. Largely engaged in political policing—thought control—it employs ordinary police techniques —and police ethics—in its work. Above all, it has borrowed from the Police Department the very basis of its work: the secret stoolpigeon system. And now the system is withering in the light of publicity.

"It takes years to develop new contacts inside underworld agencies," yet many of these are being "sheared off overnight," the article says. "Many of those whose identities were revealed have quit. At least one is said to have vanished." It all adds up to a serious situation: the FBI "is losing its underworld contacts, *and no detective agency can work without them.*"

There at least is an absolute truth. At any rate, no detective agency *does* work without them. Ask Fiaschetti. In a chapter entitled, How the Detective Really Gets His Man, or, To Hell With Sherlock Holmes, the policeman confirms the FBI view:

"Why don't somebody write a detective story with a stoolpigeon in it? Why didn't Conan Doyle tell about Sherlock Holmes' stoolpigeons? Holmes had stoolpigeons. Of course he did. How could he break a case if he didn't? In the honest-to-God story of how the detective gets his man, stoolpigeon's the word. . . . Take away information, the tip, the secret whisper of the stoolpigeon, and the detection of crimes would be paralyzed. The police organization of every city of the country, and of the world as well, would stand helpless and gaping."

Fiaschetti is quite sincere. The FBI is quite sincere. Judge Medina is quite sincere. The police-mind does not understand how you can keep order if you let people invoke Constitutional rights. The police-mind does not understand how you can enforce law without breaking the law. To the police-mind, every citizen exists only as a potential lawbreaker and you must have spies to watch him all the time. To the police-mind, the stoolpigeon system is a part of life itself, unpleasant perhaps, but like excrement, inevitable.

Starting from this fatalism about it, Fiaschetti does not hesitate to reveal things that would turn an honest man's stomach. He demonstrates that the stoolpigeon system is inseparably part of the "frameup," the blackmail and extortion, the "fix" and the "deal" of the police court. No wonder Judge Medina will not let the defense look behind the police record of the "Pittsburgh incident" with its curious "not guilty and sentenced to pay costs." If the jurors are permitted to see the stoolpigeon system in all its viciousness, they might quit listening to the prosecution witnesses! They might say with Circuit Judge Norval Harris of Indiana:

"The Communist trial is a farce . . . and the whole indictment should be thrown out. The prosecution's case is based on vile evidence of stoolpigeons and informers. That kind of evidence I would not permit in my court. I detest stoolpigeons and informers. So do the American people."

Yes we do. So much so that, despite Judge Medina, the

Government was very much on the defensive about its case. Just before the conclusion of the Communist trial, there was argument in a Federal Court in San Francisco over a date for the trial of labor leader Harry Bridges. When defense counsel predicted that this trial would see "another" parade of witnesses "dragged from the gutter," F. Joseph Donohue, Special Assistant to the Attorney General of the United States, arose to enter a denial. As reported by the *New York Times* of September 23:

"Mr. Donohue pledged himself not to offer a witness 'for whose credibility I would not personally vouch.' He would not present 'stoolpigeons' and 'labor spies,' he said."

In the Federal Court at Foley Square, stoolpigeons are presented as patriots admired by the American people; in the Federal Court at San Francisco, the same Department of Justice admits that the American people despise and distrust these perjured sneaks.

Yes we do. And that is why I chose to put off reciting the legal and political history of this trial, and other background facts, until we had caught the scent of the government's case, the foul smell of the stoolpigeon and the dank odor of the underworld slime from which the informer emerges. Later we shall have to dig deeper into this filth for the source of the "vile evidence of stoolpigeons and informers" with which the record is replete. But right now it is time to turn back and see what kind of trial, what kind of charge, what kind of case, required the testimony exclusively of informers and "underworld contacts."

Book Two: Aesop's Fables

"It would be a mistake to imagine that it is enough to adopt the Communist formulae and conclusions of Communist science without mastering the sum total of different branches of knowledge, the final outcome of which is Communism. Communism becomes a mere phrase, an empty facade, and the Communist a mere bluffer, if he has not worked over in his consciousness the whole inheritance of human knowledge."—*V. I. Lenin.*

Chapter 5

SKID ROW

"I'll Constitution you right over the head with this club," the indignant policeman told me. "Now shut up and get out of here."

If ever I saw a wronged man, it was that uniformed officer. Cops just don't like people who "answer back." They aren't used to it. In America, I mean; for the unlimited power of the policeman is not taken for granted in the same way anywhere else in the world.

Don't take my word for it. The Wickersham Commission said it emphatically after the most exhaustive study of law enforcement ever made in the United States.

But I didn't know that at the time. I only knew that according to the Constitution, "it can't happen here." That

policeman gave me my first lesson in Applied Constitutional Law—the Bill of Rights in daily practice. There are no lessons but those you learn on your own hide: I can't remember a thing about the theory of Constitutional Law as taught me in a law school not long before that incident; on the other hand I've never forgotten what the policeman taught me.

Forgive me for talking about myself. My excuse is that this book aims to give you the direct, human sense of the trial as I experienced it. I want to show not the surface events at the trial, but what the trial means to you and to me personally, to ordinary everyday Americans in terms of ordinary everyday experience. And the incident I am relating is, unfortunately, one of the most ordinary experiences of everyday life in every part of the United States to the workingmen who make up the largest part of the population of our country.

It happened at Third and Howard Streets in San Francisco. I was young and romantic and had set out to work my way around the world. On the West Coast I found something as rewarding—and as exotic, to me—as the Taj Mahal of India, the Aztec villages in Mexico, the twisted, medieval "Arab" half of Tetuan in Spanish Morocco. That thing so moving to me was called the Skid Row. The name, borrowed from the great lumber camps of the Northwest, is applied, in every city of the Coast, to the street favored by the migratory workers.

What excited me about the Skid Row was the talk of the workers. They loved ideas: philosophy, politics, world affairs, class struggle. It thrilled me to find Americans—of all national origins—who earned their living by the hardest kind of labor imaginable, but had not been stupefied and brutalized by it. It never ceased to amaze me that they were so passionately intellectual. I was too green to understand that theirs was no eagerness for ideas in the empty abstract; I only hazily felt that their intellectual interests were rooted (more solidly than my own) in the unromantic bread-and-butter problems

of their daily life. Yet that was the case. Their talk was, in large part, directed toward ways of correcting the conditions that kept them working to exhaustion several months of the year and then turned them into bums for the winter. Their talk was radical talk.

I knew nothing of working class radicalism and little of the realities of trade unionism, but this did not interfere with my appreciation of the Skid Row. Even without full understanding of the violent social conflicts behind the ideas these men discussed, I considered the very range of their talk—and the whole restless movement of the Skid Row, with its people so real and alive and unlike the wax mannequins of the movies—a demonstration of democracy beyond anything I had ever dreamed. On arrival at any Coast town, I turned automatically toward the Skid Row.

On this particular summer evening, the Skid Row was its normal self. There was the usual flow of dungareed humanity, there were the customary knots of talkers; here the Salvation Army corner, there the succession of soapbox speakers in the spot habitually set aside for them. The Skid Row was normal, but something abnormal was to happen. There was a sudden, chilling wail and before I could make up my mind whether it was an ambulance siren, a fire-engine or a harbor disaster-signal, a big car screeched to an instant halt at the curb nearest the soapbox gathering.

The car was a Marmon, then manufactured by the Nordyke and Marmon Company in my hometown of Indianapolis where there was no Skid Row, where the Ku Klux Klan under D. C. Stephenson was all powerful, where as a boy I delivered telegrams to the officers of the American Federation of Labor and the United Mine Workers and other conservative labor leaders who looked, talked and thought like business executives—and rode in Marmons. But now the name Marmon always reminds me of six or eight of the biggest policemen I had ever seen, piling out of a car on the San Francisco Skid Row in a fraction of a second.

They scattered that peaceful gathering, as well as all the little knots of talkers further down the Row, displaying that fine discrimination and delicate regard for human rights so characteristic of our policemen. Then they filled a patrol-wagon with men who were wanted on no charge, men who had not even resisted their violence, random victims of an unwarranted raid, selected for routine false arrest, routine stationhouse beating, routine release.

It was old stuff to them but I was shocked and resentful. Poor naive little me with my unsullied schoolboy faith in the inviolability of Constitutional rights! In the Indianapolis schools, I had learned what textbooks teach on this subject all over the United States. Moreover, my first three years in school were spent in Springfield, Illinois, where Abe Lincoln's home was still a shrine and his views still a tradition. I really believed what I was taught about the basic guarantees of American democracy. I "knew my rights," as the saying goes, the rights of every American citizen, so it didn't even occur to me to run when the police sluggers started "enforcing" the Constitution in the way peculiar to the preservers of law and order. I just stood right where I was, too outraged to believe what I saw. When a be-badged and duly licensed and uniformed officer of the law told me to "move on," I talked back.

"I've got a right to be here," I flared, in all my righteous ignorance of the laws of power and the power of The Law. "We've all got a right to be here. Didn't you ever hear of the Constitution?"

That did it. People don't talk back to American cops. It's a kind of *lèse majesté*. Above all, never mention the Constitution to an officer of the law. He regards that document as a personal affront. I think the cop turned red, only you couldn't tell because his face had a head start.

"I'll Constitution you right over the goddam head," he said. "I'll Constitution your goddam face." He also mentioned other parts of my goddam anatomy. No doubt he raged

at me, instead of hitting right out, only because I was so obviously young and unduly innocent-looking.

I have taken up your time with this story because it was, in effect, the story of the trial. Which is to say, there was no trial; the government just Constitutioned the defendants right over the head. Only this time it was not done with a club. It was done with a sedition law, with headline hysteria, with a charge based on a desk sergeant's theory of Communism, and finally with witnesses and evidence dredged up by our secret political police from the bottom of the political underworld.

Only the mind of a policeman could have devised this trial. That is the key to the otherwise utterly mysterious record of this proceeding. Everything in the trial stems from the bewilderment of the cop who has a problem that cannot be solved by bringing down a nightstick on the head of some citizen who has talked out of turn. The cop has been forced by circumstances to bring the citizen into court. He is still determined to keep him from talking back, from citing the Constitution, but how can he do it? How shall he transfer to the courtroom, the power he wields on the Skid Row?

Chapter 6

FOR IMBECILES ONLY

The Queen of Hearts had a similar problem. She solved it. Alice thought it all quite silly, but it must be admitted that the Queen's solution was considered worth borrowing by the government in the Communist conspiracy case. At any rate, her formula—"sentence first, trial afterwards"—was vigorously applied by Judge Harold R. Medina.

In some ways this case is madder than the one conceived by Lewis Carroll. Suppose the Government were to charge eleven men with conspiring to walk on the grass in Central Park and you were attending the trial. You would expect to hear witnesses who had overheard the defendants plotting to commit that offense, would you not? If, instead, the Government put witnesses on the stand who testified that an associate of one defendant was a Bluebeard, that he killed seven wives and hid their bodies in a closet, wouldn't you decide that you were in Wonderland and would soon wake up? I hope to show you in the following pages how wild this trial really is, and why it got that way.

The Government played the Queen of Hearts by bringing into court a ready-made theory of Communism and then refusing to admit any evidence that contradicted it or that failed to fit it. It is therefore logical for us to begin by comparing the theory on which the Communists were tried, with the undisputed surface facts about Communism. I believe the following points can be accepted (by anyone but a policeman) as statements of fact about Communism, alike for the purpose

of attacking the Communist Party or of defending it. They are elementary facts, but facts.

First, Karl Marx openly enunciated the main principles of Communism in *The Communist Manifesto* just over one hundred years ago.

Second, for the past century Marxist parties bearing various names have openly taught and acted upon those principles wherever democratic processes gave them the right to operate as legal political parties. Where such rights were denied, they did and do propagate and advance Marxist-Leninist principles by underground methods.

Third, from the very proclamation of *The Communist Manifesto,* governments and ruling classes have tried to outlaw the Communists. (In fact, the Manifesto was itself issued in 1848 to meet a wave of redbaiting then sweeping Europe.)

Fourth, from the two prosecutions of Marx himself in 1849 to the American Communist conspiracy case just a hundred years later, the attempts to find something criminal about Communism have failed to overcome one major obstacle: that Communist doctrine specifically repudiates violence in the sense of minority adventures, individual acts of terror and other magic formulae for revolution. Marxist writings and teachings sharply differentiate (as the United States Supreme Court has noted) between the broad historic process called "social revolution," and the violent coup d'état or "palace revolution." The latter is emphatically frowned upon by the Communists.

Fifth, the Communists have won hundreds of millions of adherents over the face of the earth. The Communist movement today *governs* perhaps a third of the globe and its inhabitants. Even the State Department's recent anti-Communist White Paper on China does not deny that the Communist regime there enjoys popular support. And certainly the millions who have joined the Communist Party in Italy, France and other countries where anti-Communist governments and

classes are in power, have joined it voluntarily. One may argue that they are deceived, if he wishes, but not that they are subject to compulsion.

Sixth, in the course of the past century, the Communists have elaborated the principles first stated pamphleteer-fashion in *The Communist Manifesto,* into an enormous body of theory. As the record of this trial reveals, they call that encyclopedic body of literature, "the classics of Marxism-Leninism," and describe its principles as "scientific Socialism."

Enough of this work was introduced in evidence at the trial to fill thousands of pages of the record. From those pages, it is evident that no desk sergeant is competent to explain Marxist theory. I myself have read and studied all the works cited at the trial, yet I do not regard myself as competent to expound the principles of Communism, and where I can I shall rely upon direct quotation of official sources.

Judge Medina professed to find Marxist theory bewildering and said it seemed to employ a "special jargon." There is indeed a technical terminology in any of the social sciences for the use of Communists and non-Communists alike; if one wishes to deride it, he may call it a "jargon." The Marxist works produced at the trial are sometimes relatively popular in style, but many of them digest and generalize the experience of past societies and the lessons of past revolutions. They are necessarily more or less difficult and technical. One has only to think of the three heavy tomes constituting Karl Marx's classic study, *Das Kapital*—the very foundation of the modern Communist movement—to realize that no honest man could attempt to characterize Communism without extensive study. After such study, he would have to describe it in scientific terms, with cautious qualification, and at great length.

To sum up the elementary facts: Communism today is a complex doctrine guiding an established world-movement of vast scope. Compare this reality with the government theory on which the American Communists were tried. *The government theory, if we may dignify it with that name, is*

that Communism teaches how a small band of armed men may seize power in a national emergency by ordinary cutthroat methods. I am not exaggerating the kindergarten character of the government case. Let me cite a few lines of a typical report on the trial by Russell Porter, who repeated the same approved formulation of the prosecution case day after day in the *New York Times,* for instance this, on June 4, 1949:

"Government witnesses have testified the defendants set up a secret, nationwide organization to train professional revolutionaries in the tactics of the Russian Revolution of 1917. Among other objectives, according to the evidence, party members were taught how to infiltrate the armed forces, get possession of soldiers' and sailors' uniforms, and use force and violence with the aid of the Red Army, when the time is ripe, to set up a Soviet America dictatorship to destroy the United States Constitution and its guarantees of freedom and democracy."

This is the ultimate in simplification; it is the pre-school version of the theory of Communism. Or perhaps it would be fairer to call it the imbecile's own guide to Marxism. True, as Porter says, government witnesses did testify to these preposterous "facts." And they do, indeed, correspond to what we have been taught by the House Un-American Activities Committee, newspaper headlines, radio commentators, writers of "I Was a Communist" books and articles, and all the rest of the elements that make up the machine for the manufacture of public opinion. But the repetition of childish nonsense for however long a period by however many persons will not make sense of nonsense. And the bogey-man theory of Communism is nonsense by a decisive test: it does not explain current events. The Communists all over the world would not be achieving the successes that so alarm the anti-Communists, if they were the simpletons—villains, but still simpletons—portrayed in the government "theory." Poll-parrots cannot lead men in battle or rule great nations in time of peace.

Proceeding to trial on such a basis, the government could only stumble from absurdity to monstrosity. The indictment applies the government "theory" of Communism to the period from "on or about" April 1, 1945 to July 20, 1948, but the "evidence" admitted in the trial goes back to *1848!* The prosecution set out to show that Communists, even before the Russian Revolution, were robots who slavishly applied Marxist doctrine to every situation in every country in identical fashion, and that since the Bolshevik Revolution they quite literally get "orders" from Moscow for every move. The choice of a certain period of three years for the actual indictment, was determined by the following facts:

During the period of American-Soviet wartime harmony, particularly following the Teheran Conference (October 1943), the then leader of the American Communists, Earl Browder, engineered a radical alteration of the Communist movement here. He proposed to take the Communist Party out of American political life and leave it only as a kind of educational society. He argued that the wartime honeymoon of the United States and the Soviet Union would continue in time of peace and that it would be accompanied by a like honeymoon of capital and labor within the country. His proposals and his supporting arguments were strongly opposed by William Z. Foster, who said in a letter to the fifty-odd top American Communists, that the major capitalists, grown fat on war profits, would be more aggressive than ever after the war, both at home and abroad. Foster obtained only one supporting vote, however, and Browder's proposals were adopted by the Communists in 1944. Foster's letter was not made public at the time, so the general membership of the Communist Party did not then know his views. In early 1945 there were many indications that powerful American interests did not plan to continue friendly relations with Russia. The beginnings of the cold war (or the resumption of the basically anti-Soviet policy followed since 1917) were reflected in domestic policies. Inside the Communist Political Association,

which had replaced the Communist Party, these signs were noted, and various doubts were voiced as to the wisdom of the change made in 1944. But no one said outright that Foster had been right and a basic error had been made in following Browder.

In the spring of 1945, Jacques Duclos, a French Communist leader regarded with great respect by Communists in other lands, published an article primarily aimed at certain tendencies in his own party. The article, however, strongly criticized the American Communists and reproduced the letter written by Foster in 1944. The *New York World-Telegram* published a story about this article on May 22, 1945 and two days later the full text, in translation, together with the 1944 letter by Foster, appeared in the *Daily Worker*. Publication of this material caused an explosion within the Communist Party. A general discussion was opened and for some weeks the *Daily Worker* was largely devoted to the discussion. The upshot of the affair was that the party reversed itself, declared that it had made a bad mistake in listening to Browder, and adopted substantially the program of Foster. Browder lost influence and was later expelled.

These events are recited in the indictment in unrecognizable form. They are distorted to fit the government "theory" of Communism. They are repeated at the trial in opening argument and in the testimony of prosecution witnesses, as twisted to fit the "orders from Moscow" assumption. The prosecution case stuck rigidly to the theory of Communism as a plot to seize power by the use of little bands of armed men in troubled times. It followed, in short, a theory in direct conflict with the known facts about the scope and content of Communist theory as exemplified by the Communist movement in the world today.

This led to a line of "proof" that so glaringly contradicted reality as to give rise to a doubt: the prosecution might be considered as not really making a serious attempt to obtain a conviction. The atmosphere in the courtroom will quickly

dispel any doubt; the political climate throughout the United States forbids such a thought. It is a grimly earnest trial and what is more the defendants were convicted before they ever entered the courtroom.

But the result is a puzzle: the government's "proof" proves only that it holds a fantastic theory of Communism; it is contradicted at every turn by indisputable facts. What happens, then, in such a trial? The answer to that is the whole essence of the case: the policeman takes over! Not just the United States Marshals who were instructed by the Court to use force on counsel for the defense; not just the jailers who handcuffed three defendants remanded to jail in the course of the trial, and two more sentenced to thirty days for contempt of court; not these but the political police took over!

And that is why the story of this trial is every American's business. As a trial, it was no trial at all; as "due process," it was a farce. But as a political portent, it was and is deadly serious. That is why I am writing. The fact that I am writing about a trial of Communists, should not mislead you as to this book's purpose. It is not a plea for Communism. It is not even a plea for the particular Communists named as defendants. It is a warning that *you* are in danger if police lawlessness, hysteria, prejudice and panic are permitted to replace the Bill of Rights in certain cases. Toleration of lynch justice *only* with respect to Communism, will end up as toleration of lynch justice, period. We are not dealing with a new wrinkle in jurisprudence; what we have here is a familiar and perilous political principle. That principle was already in operation in Judge Medina's courtroom when the Communist conspiracy case began.

Chapter 7

HAROLD IN WONDERLAND

We are in the Federal Court for the Southern District of New York at Foley Square in New York City. It is the beginning of the trial proper and we intend to stay through opening argument and the full testimony of the government's first and chief witness—ex-Communist Louis Francis Budenz. Even thus early, however, the trial has a history.

1. The defendants were indicted July 20, 1948. The indictment, that we have mentioned and will have occasion to deal with again from other points of view, may be here summarized from one angle. It accuses the defendants of conspiring to "teach and advocate the overthrow and destruction of the government of the United States by force and violence," not directly but in these several indirect ways: a. by organizing the Communist Party; b. by arranging to "publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers advocating the principles of Marxism-Leninism"; c. by arranging to "conduct and cause to be conducted, schools and classes for the study of the principles of Marxism-Leninism, in which would be taught and advocated the duty and necessity of overthrowing and destroying the government of the United States by force and violence."

2. The defense immediately moved to quash the indictment on two main grounds: I. that the Grand Jury which returned the indictment was a handpicked rich-man's jury in violation of the Constitution; II. that the Smith Act on which

the indictment was based, and the charge under it, are un-Constitutional; they violate such basic rights of individuals as freedom of speech and the press.

3. Federal Judge George M. Hulbert ruled that the defendants must stand trial. In effect, this leaves the Constitutional questions for possible ultimate decision by the Supreme Court. He declined to decide the Grand Jury question, holding that it might be raised if and when the case came to trial.

Even in the earliest stages of the case, the defense encountered crude prejudice. We have been told many times that Judge Medina "leaned over backward" to be fair—he often said so! But start at the very first pages of the stenographic transcript during preliminary motions, arraignment and so on. Here on page 20:

(From the record)

MEDINA: That is the way we conduct our judicial proceedings *in this country.*

* * *

One must indeed lean over backward to miss the inference that Communists represent a foreign country—Russia. Two pages more and we get it again:

(From the record)

MEDINA: All right, they will have an *American* trial.

* * *

4. It came to trial the 17th day of January, 1949. The defense immediately raised the Grand Jury question and for many weeks presented evidence in support of its charges. This pre-trial "challenge round" of the proceedings lasted until March 4, when Judge Medina denied the defense motion to quash the indictment and ordered the trial proper to begin March 7.

5. Beginning March 7, time was consumed with such preliminaries as selecting twelve jurors and four alternates, so

that presentation of opening argument was delayed until March 21 and March 22.

That is where we enter the courtroom. Having heard the opening arguments, we return on March 23 when the prosecution places Budenz on the stand. We remain here until late in the morning of April 6 when the first witness finally leaves the stand. This represents ten days of actual testimony, ten days of court. During that period, every problem inherent in such a trial comes to the surface; every argument has to be made or renewed. Thus we obtain a fair sample of the actual courtroom conduct of such a trial.

The sample shows that Judge Medina tried the case according to the policeman's theory of Communism devised for this specific trial. During opening argument he laid down his line for the conduct of the trial. The prosecution had explained its "cutthroat bands" theory of Communism and the defense proposed to refute that description of Communist principles by showing what the defendants *actually* taught and did every minute of the period during which they were alleged to have been engaged in such melodramatic shenanigans. But even while Eugene Dennis, Secretary of the Communist Party, acting as his own counsel, was formulating this projected defense, Judge Medina interrupted to say:

"I don't see how, Mr. Dennis, to disprove a charge of conspiring to teach and advocate the overthrow of the United States government by force and violence, it is going to be relevant for the defendants to show what very good boys they were in some other respects."

One need not be a lawyer to know that Judge Medina has here made a very improper comment in the presence of the jury. And without being a lawyer, one may safely say that the learned Judge has embodied some very bad law, as lawyers put it, in his comment. For it is the very a-b-c of common justice, that a defendant does not have to disprove charges; the burden of proof is on the prosecution. It is true that Dennis is offering to *prove* something, but he is not ac-

cepting any obligation to *disprove* the charge. Judge Medina is no novice; he is well aware that he is giving the jury a misleading impression of Dennis' offer.

This is the real point: the prosecution, in order to prove the charges, has indicated what kind of evidence it plans to offer—cloak-and-dagger stuff. Now the defense states that it proposes to *discredit that evidence,* to discredit the kind of case offered by the government, by showing that Communist principles and practices have nothing in common with cloak-and-dagger conspiracy. Surely *that* is relevant! Surely that is not at all the same as undertaking to disprove the charge!

Dennis told the jury that the defendants would show that their lifelong activities, teachings, and whole way of life had and could have—in full context—only one meaning: to show the American people that the Communist way was the right way. It was not a matter of winning the sympathies of the jury for Communist theory, but of proving that the defendants had sought only to persuade the people of the United States that they—the majority—should correct certain fundamental evils (war, economic crises, Jim Crow) which Communist theory attributes to capitalism itself and contends can only be eliminated by the adoption of Socialism.

In sum, the defendants say they wish to offer proof that they sought only to *convince* the American people by fair argument. That would seem an entirely reasonable way of defending themselves against the accusation of planning to *coerce* the American people. It would seem the only logical way of answering the accusation that they planned to *force* the people into Communism with the help of the Red Army.

But Medina said "No!" and "No!" again. Breaking into Dennis' outline of the defense proposal to describe actual Communist work, he remarked with heavy sarcasm: "I don't think you'll get around to that." And he made it his business to see that they did not "get around to that" without fighting every inch of the way. Thus he assured a trial fantastic beyond precedent.

The moment the actual taking of testimony started, the Alice in Wonderland character of this conduct came to the surface. For the government witnesses, starting with Number One, were permitted to picture activities in the Communist Party to suit the needs of the prosecution, but the defense was not permitted to reply at all! Budenz, for example, spent five full days and a part of a sixth under direct examination. Having been in the Communist Party for years, he described his life and activities there à la Russell Porter and the FBI. He testified, specifically, that as editor of the more or less official party newspaper, the *Daily Worker,* he had taught and advocated the violent and forcible overthrow of the United States Government in the course of his editorial work. Now watch what happens when the defense tries to refute this.

The defense proposed to prove that Budenz was a common liar, or perhaps an uncommon perjurer. To this end, it presented the articles Budenz had himself written for the *Daily Worker* during his years in the party. Seeking to force his admission that not one article, not one sentence, not one phrase counselled coercion of the American people—force and violence—the defense offered the articles in evidence. But the Court said these articles—a series on Socialism, by the way—were irrelevant precisely because they contained nothing about force and violence! They were inadmissible, Medina held, because they were exclusively concerned with labor problems, Jim Crow, the fight for peace, and other legitimate political activities.

Why, yes! That is exactly the point. The chief government witness is unable to show a single line that appeared in the *Daily Worker* while he was its editor, representing something other than legitimate political activity. But Medina says this is inadmissible. To evade the real point, and to make it appear that the defense is offering only certain carefully selected parts of the paper, he put these rhetorical questions to the witness:

"I suppose, Mr. Budenz, that in any one of these periods

it was not the fact that every article in the *Daily Worker* from page one to the end had something about overthrowing the State by force and violence?"

"No, sir."

"There must be plenty of parts of the *Daily Worker* that had nothing to do with these issues?"

This is infamous! The record is inescapable: it is not true that the defense selected *parts* of the *Daily Worker,* parts suitable for its purpose. In question after question, the defense gave Budenz the whole range of the paper during his editorship. Why did the Court permit Budenz to testify that he advocated force and violence in the pages of the *Daily Worker?* Surely, if he did so, the best and only trustworthy evidence would have been the guilty articles themselves. Had any such article existed, the government would certainly have produced it in evidence. The Court, in all fairness, should have required the introduction of such articles before permitting the prosecution to question Budenz on this subject. But the Court did not limit the prosecution or the witness in any way.

So now it is up to the defense to show the inherent dishonesty of this procedure. The lawyers therefore invite Budenz to cite any example he pleases of the advocacy of force and violence, in any part of any issue of the *Daily Worker.* His memory fails; his replies are vague and evasive. So the defense next proposes to introduce Budenz' writings, one by one, but here the Court interposes barriers. The lawyers fight for their rights, however, producing the Budenz' series on Socialism. They wish to give him a chance to look at each one and show which, if any, constitutes or contains the advocacy of force and violence to which he has testified. How else is the jury to decide whether it agrees with this witness' judgment of what constitutes the advocacy of force and violence? How else is the jury to decide whether he is an honest man or a barefaced liar? How else is the jury to fulfill its sworn duty, a duty it cannot delegate to the witness or to the

Court, a duty that belongs to the jury alone: the duty of judging the facts in the case?

Yet now the Court rules that the articles are inadmissible. It forbids the jury to read them! It refuses to let the defense confront the witness with his own writings that contradict his testimony. And not content with that, Judge Medina brazenly misrepresents to the jury the nature of the defense offer!

Judge Medina did not stop there. He elaborated an argument that had this effect: if, in fact, there were not one word ever written or published by the defendants to *sustain* the charges made by the government witnesses, then nothing the defendants wrote or published was admissible in their own defense! If, in fact, every word ever written or published or spoken by the defendants, appears in the context of lawful criticism of existing evils; if the defendants dealt only with the oppression of labor, the subversion of democracy by Wall Street, the race discrimination imbedded in our national life, then their words were doubly inadmissible!

"As I read those articles," the Judge explained, "it again occurred to me you were going to seek to take the offensive, and the offensive in this case is by the prosecution. Now if you think this or that or the other American practice, or a thing that is done here or there, is going to be pilloried, and that the defendants and their counsel are going to take the offensive, you might just as well know now that that isn't going to happen."

Surely this, too, is borrowed from Lewis Carroll. "I'll be judge, I'll be jury. . . . I'll try the whole case and condemn you to death!" But Medina denied vehemently that there was any unfairness about it. He was perfectly willing to admit articles that were "relevant and competent," he said. The only kind of article he wouldn't admit is the kind that actually appears in Communist publications! He explained why he couldn't do *that*:

"When you have literature by this witness which covers

everything under the sun that may be deemed a grievance by anybody, of young people because they were not given positions of responsibility, women because they cannot be given positions of men, colored people because they are excluded from this or that in certain parts of the country, the Jews because they are not treated, in their opinion, the same as other people, I am going to make the same ruling that I have made here, you see, that that has no bearing on what this witness has testified to at all, and I am going to rule it out."

Medina never relented. He stubbornly maintained that he was only insisting on "a prosecution of these defendants, not of America as a whole." He would admit competent documents. Every document offered, however, was rejected until defense attorney Richard Gladstein announced that under the Court's rules there was nothing further the defense could submit.

"Of course," he said, "if the only article I can show you is one which shows force and violence, I will never produce such an article because none was written."

And so a conviction in this remarkable case was assured. War and Fascism are out of the case. Jim Crow is out. The jury is not to hear what Communists speak, write, or think. It is to hear nothing other than cloak-and-dagger stuff as presented by the government. It is to hear what prosecution witnesses *say* Communists speak, write and think.

But there is no stopping here. Once you take this path, there is no halt—short of shock treatments—this side of the madhouse. To be consistent, therefore, the government now supplied a legal "theory" to justify the procedure adopted, a "theory" worthy of the institution in which this trial seems bound to end.

Chapter 8

THE LAW IN WONDERLAND

The Queen of Hearts was always screaming, "Off with their heads!" But to do Wonderland justice, it must be noted that Alice never saw anyone executed. Not quite so optimistic a report can be delivered from Foley Square. No actual decapitation took place there, but when judicial sandbagging was ordered, sandbagging followed. That was Judge Medina's department, and he managed it in a very "legal" way, with a very simple formula: "This is an ordinary criminal case." Now that is so brazen it is subtle! Its implications do not at once leap to the mind. So observe what follows in this little incident with a later witness, recorded at page 3382 of the record (which does not, unfortunately, record gestures and intonations):

(From the record)

JUDGE MEDINA (to witness): Now do you see Stachel here?

DEFENSE ATTORNEY SACHER: May I respectfully request that the defendants be referred to as "Mister"?

PROSECUTOR MCGOHEY: I have no objection.

MEDINA: You may request it but I may leave the "Mister" off occasionally. (To witness): Now do you see Stachel here?

WITNESS NOWELL: Yes, your Honor, I do.

MEDINA: Now go down there and point him out.

(Witness goes to edge of defense counsel table.)

NOWELL: The gentleman sitting there next to the aisleway.

MEDINA: You better go right over there and point to him.

NOWELL (proceding toward defendant Stachel): This is Mr. Stachel.

* * *

What the witness has done under the Court's direction, is known to the underworld as "putting the finger" on a victim. Transfer of this technique to that other underworld, the police court, can be justified in only one situation: when the very essence of the proof is the ability of a witness to identify a man charged with a specific criminal act. In the Communist conspiracy case, there is no element of this situation. The identity of the defendants is not at issue; their position of leadership in the Communist Party is not denied; and, what is more, they are not charged with any act. Identification cannot, therefore, be a material element of the proof in this case. No, the sole purpose of the "fingering" is to tell the jury that, in the eyes of the Court, these men are no better than common gangsters, or at least that they are charged with something on a par with the crimes of an Al Capone.

Eventually, Medina said so. When the defense protested against this "fingering" technique, and protested each time it was repeated, Medina replied that this was an ordinary criminal trial. "We will follow the same procedure here that we do in other criminal cases," he said. The charge was to be proved, he said, as you might prove, say, a burglary charge.

"You are not dealing with a criminal who has committed a robbery," Gladstein protested. "These are political leaders of a political party."

Medina refused to consider this argument. It was essential to a whole series of rulings on which the government case rested, that he maintain his position. As Russell Porter summarized the Judge's comments during later argument—following the close of the government's case—the charge in this case is compared not merely to vulgar crimes but to violent ones.

"The Judge reinforced his decision that the government had made out a *prima facie* case by comparing the position

of a man charged with first degree murder and shown to have held a grudge against his victim, gone to a store and bought the gun with ammunition, hidden in the man's house and waited till he came home to shoot him.

"He upheld his decision to accept the testimony of the FBI agents by comparing them with similar police agents who join a gang of bank robbers and learn the details of their conspiracy in order to report them to the authorities."

An "ordinary" criminal trial! A "common" criminal case! A prosecution for burglary! But look at the record. If the government, in good faith, thought this a common criminal case, why did it introduce into evidence, beginning with its very first witness, scores of books and pamphlets by Marx, Engels, Lenin, Stalin and others? In what kind of "ordinary" criminal trial does the prosecutor read to the jury from *The Communist Manifesto, Foundations of Leninism,* and so on? What kind of case fills thousands of pages of its record with extracts from printed works, openly published by the Communist Party and admittedly circulated by it as widely as possible? *What kind of "common" crime can be proved by books?*

Counsel for the defense repeatedly asked that question. It provoked disputes, colloquies, that took up many hours of the trial. It was never answered but we may as well answer it right now: no crime, common or uncommon, ordinary or extraordinary, can be proved with such evidence. No criminal trial has such a record. This is not, therefore, a criminal trial; it is a political trial. That is the heart of the matter and that is why the Court steadfastly declined to answer the question or to acknowledge the true character of the case.

Judge Medina's attempts to show why the case should be treated as a burglary case, produce some of the most startling dialogue in the record, and his use of the burglary-theory produces the most fantastic procedures. On March 30, during the direct examination of Budenz, the prosecution offered in evidence a book known as *The History of the Communist*

Party of the Soviet Union, one of the youngest of the "Marxist classics." Defense Attorney Richard Gladstein rose to say:

"I have no objection to the contents of the book, but I will make this objection: I submit that it is not proper in a court of law to try men upon the fact that they recommended for study any book."

Another defense attorney, Abraham Isserman, added that introduction of the book was, in effect, to put books on trial, to try history.

Medina summarily dismissed the defense point of view: "It is trying those persons who used the book and other means to allegedly commit a crime, and that is part of the *paraphernalia* of the charge, it seems to me. I will allow it."

Paraphernalia! But a book raises somewhat different problems than a burglar's tools, the defense caustically submitted.

"Is the jury to read and study this book before it renders its verdict?" Isserman asked. And how would this be arranged? "Is the Court going to do it? Or shall we read it to the jury word for word and then bring in people to explain it?"

For all reply, Medina reiterated his burglary theory: "This book is, as I understand it, *part of the paraphernalia, one of the implements* that are alleged to have been used by the defendants in forming the conspiracy that is alleged in the complaint or in the indictment."

There is something about political trials that leads them inevitably toward book-burning. Was it not a famous Nazi who said: "When I hear the word 'Culture,' I reach for my gun"? Judge Medina, having compared the defendants to burglars, has no retreat: he must compare the only tools they used—books—to a burglar's jimmy. There is the smell not only of bonfires but the gas-chamber in this vicious sophistry.

"To call these books 'paraphernalia' and 'apparatus' is to reduce books to the level of tools of thieves," Sacher declared on another occasion. "I tell you the culture of the world will not long survive with that approach to books."

Of course, if the prosecution could show that the defendants threw Marxist classics at the head of the witness, intending thereby to make Marxist-Leninist principles penetrate his mind, the Court might reasonably speak of the books as "implements" of the crime. But there is no evidence that these principles ever made any impression on the mind of Louis Budenz. In the actual circumstances, the comparison shows a profound contempt for ideas, whereas the Founding Fathers —or their constituents—thought the free circulation of ideas was so important that they protected that freedom in a Bill of Rights tacked on to the Constitution.

An accusation against ideas must be met by defense of ideas. All Medina's freely invoked powers could not put the burglary case together again. Though he threatened the defendants and their lawyers almost from the first day of the trial, though before the trial was over he did indeed remand several defendants to jail for the "duration" and set United States Marshals to keep the lawyers in their seats, he could not put down the defense challenge. The defense dared not relent. It had pointed out before the trial began that the defendants were charged with "wrong" ideas, whereas the Constitution protects ideas from the scrutiny of policemen and politicians. Once this right had been violated and the defendants' ideas placed on trial, the defense could only insist upon demonstrating at every juncture that it had not misstated the nature of the case. The prosecution—in which we must include Judge Medina, or rather, in which Judge Medina included himself—not being free to turn back, could only attempt to cry down the defense.

This it was that gave the trial its bitter flavor of personal combat between a judge and a group of lawyers. Virtually all that the public obtained from press reports of the trial, was the fact of the combat. The impression, the only impression left with the public, was of a poor, patient judge martyrized by rascally Communist lawyers who used "Communist tactics of jumping up and down" to wear out this very incarnation of

even-handed justice. The Judge frequently furthered this impression by charging that the defendants were trying to provoke him into some action which would cause a mistrial. In this way, he sought to account for the unusual character of the trial.

But that explanation was unnecessary. How could a trial full of books have been other than strange? If you offer a burglar's jimmy in evidence, why there's an end of it. But once you admit a book into evidence, you have to ask what the book was used for. A jimmy? Why that pries open a window. But a book? Ah, that's a question of the *contents* of the book, the *meaning* of the book, the life and character of the writer and the reader. When only parts of each book, pages or even sentences, are offered in evidence, nothing but a trick answer can result. The very quotations read by the prosecution into the record, warned against doing what the prosecution was thereby doing. Prosecutor McGohey, reading an article by Eugene Dennis in *Political Affairs*, Communist monthly, seemed unaware that he was telling the jury it could not understand Marxism-Leninism by taking extracts out of context:

"Stalin counselled the Bolsheviks to study Lenin," Dennis wrote, " 'to study Lenin not from isolated quotations but from the substance of his work, to study him seriously and thoughtfully.' "

Medina nevertheless permitted the prosecution to read such isolated quotations throughout the trial. To give the appearance of fair play, he would invite the defense to find other extracts if it could be argued that they contradicted the prosecution offering. But he would not hear the real defense reply—that in the context of the whole book and the whole theory of Marxism-Leninism, the extracts did not mean what prosecution witnesses were allowed to say they meant.

The Judge and prosecutor not only depended upon out-of-context quotations, but frankly feared books in context. *The History of the Communist Party of the Soviet Union* played

so large a part in the government's case, that the question arose of giving each member of the jury a copy so that he might follow the various readings. Then it was suggested that it would be even better to give each juror a copy to retain. But here the government and the defense divided:

(From the record)

McGOHEY: Not overnight.

MEDINA: No, not overnight.

McGOHEY: Oh, we would have them here every day. We will bring them into the courtroom so that the jurors can have them each day.

CROCKETT: May I suggest that there is nothing inappropriate for the jury to keep the books. There is no very great expense attached to it. This is the cheapest issue.

MEDINA: No, no, I don't go along with this business of taking them home.

SACHER: When will they read them?

MEDINA: We have recesses.

SACHER: Recesses? We would like them to smoke during the recesses.

MEDINA: You would like them to take them home?

SACHER: Yes, I think it is a good idea.

MEDINA: Well, I don't.

* * *

Judge Medina was forced to elaborate his "common crime" theory of the trial to explain why extracts are admissible but whole books are not. This required him to drop the burglary hypothesis and substitute—arson! It was April 4, near the end of the cross-examination of Budenz. Defense attorneys were pressing their point. Not only whole books, but additional expert testimony would be necessary to explain the extracts already admitted, they said, because "we are getting into a big field of political ideas and philosophical ideas."

"If your views have any substance," said the Judge, "we will be here a good many years."

"Well, your Honor," attorney Isserman retorted, "the government is bringing in these documents, not the defendants. They are bringing in volume after volume and book after book with regard to a philosophy that took a hundred years to develop, and that is really what is on trial."

Why, now, come, said Medina. Suppose A, B, and C are charged with conspiracy, and suppose "they got up certain papers" that described their conspiracy "in the most unequivocal language." Nothing was missing. *"They had everything down there, how they were going to get to the President's house and blow up the house,"* and so on. And suppose, said the Judge, that there was a lot more of this document, 750 pages more of it, that had nothing to do with the details of the plot "but spoke in the most extravagant terms of how good all these people were." What would be the use of admitting the 750 irrelevant pages?

This is nonsense-with-a-purpose. Of course no such document ever existed or could exist. Gangsters plotting an unmistakable crime that requires writing down the plan of action, don't add 750 pages of whitewash. If they fear the guilty documents may fall into the wrong hands, they may employ cryptic language; but then they would not defeat the purpose of the cryptic language by putting down in "unequivocal language," somewhere else in the same communication, their whole plan "to burn down the President's house." Men who plan tangible *acts* either don't put them down on paper or don't add pages of vague self-praise.

And therein lies the secret of Judge Medina's maneuver. He is deliberately concealing from the jury *the difference between acts and ideas*—the very essence of the Communist conspiracy trial. Communist books, written up to one hundred years ago, certainly cannot contain unequivocal plots to burn down anything in the United States from on or about April 1, 1945 to July 20, 1948. Nor can the writings of American

Communists before or during the period covered by the indictment speak in "unequivocal language" of some criminal act covered by this indictment. Why not? For the very good reason that *this indictment does not charge them with any criminal act whatsoever!* The defendants are not charged with an *act;* they are charged with something called "teaching and advocating." Nor are they charged with teaching and advocating any act, criminal or otherwise, least of all a clear and specific offense such as burning down the President's house.

There is the gimmick. Sedition trials, political trials, trials of ideas, always have some such dodge. The defendants are charged with no act. They are charged only with teaching and advocating certain ideas known to Communists as "the principles of Marxism-Leninism." It is these ideas, this complex system of ideas as a whole, that the government is attacking. The government says that "the principles of Marxism-Leninism" require the overthrow of the government of the United States by force and violence and therefore, the defendants, who teach those principles, should be put under lock and key. *That* is the Communist conspiracy case.

"I ask you ladies and gentlemen to remember that phrase, 'Marxism-Leninism,'" Prosecutor McGohey said to the jury in his opening argument. "You will hear it frequently, throughout this trial. We propose, we say that we *will* establish that it is fundamental in the principles of Marxism-Leninism:

"1. That Socialism cannot be established by peaceful evolution but, on the contrary, can be established only by violent revolution, by smashing the machinery of government and setting up in its stead a dictatorship, a dictatorship of the proletariat.

"2. That this smashing of the machinery of government and setting up the dictatorship of the proletariat can be accomplished only by the violent and forceful seizure of power by the proletariat under the leadership of the Communist Party."

But this is in itself an admission that the prosecution case

does not rest on any document or documents admitting in "unequivocal language" an intent to perform specific criminal acts. It does not modify this admission that McGohey goes on to outline the cloak-and-dagger features of the government case. Following the principles of Marxism-Leninism, he said, the defendants in schools and publications taught and teach "that the classic model for forceful and violent overthrow of the government of the United States is the Russian Revolution of October 1917" and so on through the kindergarten-theory of Communism. But all he is saying is that he, Tom Clark, and perhaps Judge Medina, so *interpret* the multiform doctrine called "Marxism-Leninism." He is conceding that there is not and cannot be evidence that the defendants planned, so to speak, to burn down the President's house. Nor can there be any document *advocating* the commission of any given act of violence at a given time and place. There are no admissions; there is only interpretation.

Now the cat is out of the bag. In the context of today's events, Medina's hypothesis about burning down the President's house, is evidence of a frame of mind that may well lead to burning up the Bill of Rights. There has been only one case in history of a government trying to outlaw Communism on so shabby a pretext. That was the trial of the late Georgi Dimitrov and the leaders of the German Communist Party at the instigation of Hermann Goering and Paul Joseph Goebbels. Appropriately enough, the charge against Dimitrov and his co-defendants was—arson! Is there no present day symbolism in the fact that the very men who cried "Arson!" had themselves set fire to the Reichstag, subsequently ordered the burning of books loved by all the world, and finally started that mighty blaze known as the Second World War?

Chapter 9

GOOD MORNING, JOE

Now here is a pretty pickle! Mr. McGohey has an Alfred Hitchcock scenario on his hands but the light is bad. He plans to present (and does present) a simple Hollywood cloak-and-dagger plot. All his evidence is of that character and his witnesses would be miscast in any other kind of story. But those confounded books have got into the picture! It is a very serious conflict for the prosecution. Since this is not Hollywood, the scenario could not be "shot" with the absolute freedom the prosecutor might prefer. Certain concessions to reality had to be made. Even in presenting his kindergarten version of Communism, the prosecutor was forced to use the language of actual Communism, that is, to read from the vast library of Communist theoretical works, the Marxist "classics." The melodrama gets lost in the lecture-hall: now it is the prosecutor who reads extracts from a variety of books and pamphlets, after which the defense reads counter-extracts from the same books; then it is the turn of the defense to read extracts and of the prosecution to counter. Our thriller threatens to end up as a documentary for classroom use.

This is no imaginary problem for the prosecution. It is very real. The Communists must be presented as simple cutthroats who seriously believe they can "seize" power by armed force in an economic crisis or upon the outbreak of war. But how can you make a jury see them that way if day after day they are shown as studious men poring over scientific books? The books create the wrong atmosphere. They

emphasize the complexity of Communist theory and the seriousness with which Communists use it as a guide in their daily work. They suggest that Communists just don't fit the description supplied by the prosecution. If they don't, what becomes of the whole prosecution theory of the case? Plainly, the prosecutor is in trouble.

Now comes Louis Francis Budenz, a slightly soiled hero, to the rescue. His membership in the Communist Party from mid-1935 to late 1945, during which period he occupied prominent positions and came into contact with the defendants, lends a certain authority to his testimony. His abandonment of the party for the ostensible purpose of returning to the Catholic Church, makes him a safe witness and one certain to be very hostile to the defendants: vindictiveness goes with renegacy. Moreover, as a witness, Budenz was not an untried quantity. He had told his story to a number of governmental bodies: the House Un-American Activities Committee and comparable bodies in various states; he had even published a book with substantially the same bias.*

The prosecutor has assigned to Budenz the admittedly difficult task of reconciling the complicated and known facts about Communism, with the government's nightmare-in-the-kindergarten theory. This is a double job: first, to fit the actions of the American Communists into the "orders from Moscow" pattern; second, to water down Communist theory to the same level. Budenz tackled the first part of the assignment in the afternoon of March 24.

The specific questions-and-answers purported to "explain" events within the Communist Party from May 1945 through the years covered by the indictment (the revolt against Browder, previously described). The prosecutor first showed

* While the defendants were under indictment but before trial, Budenz testified before the Un-American Committee that Eugene Dennis had headed a wartime spy-ring! Needless to say, Dennis was not indicted for espionage and the government's chief witness at Foley Square said nothing about spying.

that Budenz had held leading editorial positions on the *Daily Worker* during the period in question; then the witness was asked about the paper's news of the San Francisco Conference to organize the United Nations. Budenz identified Joseph Starobin and Frederick Vanderbilt Field as the reporters who "covered" the conference for the *Daily Worker*. The direct examination then continued:

(From the record)

GORDON: While Mr. Starobin and Mr. Field were in San Francisco, did you receive any communication from either of them?

BUDENZ: Yes, sir. I received several communications but one specifically from Mr. Starobin.

GORDON: Can you recall when it was that you received it?

BUDENZ: It was—was in between the time that D. Z. Manuilsky of the Ukrainian Delegation arrived in San Francisco—

* * *

Defense Attorney Sacher interrupted the witness here to ask the Court to direct him to state the time in terms of day, date, month or year. This is normal procedure; throughout the trial Judge Medina required that "the time and place be fixed" by the calendar. But on this particular occasion, he did not choose to overthrow the obviously rehearsed testimony by such a requirement. Gordon made only a perfunctory show of asking for the date:

(From the record)

GORDON: Well—

BUDENZ: It was in May of that year.

GORDON: Do you remember the date?

BUDENZ: Not the specific date. It lay between the arrival of D. Z. Manuilsky of the Ukrainian Delegation in San Francisco and the publication of the Jacques Duclos article attacking Earl Browder.

* * *

Medina not only overruled a defense motion to strike this

testimony from the record, but himself prodded Budenz with questions designed to further identify Ukrainian Premier Manuilsky as the former secretary of the Communist International. The date of his arrival in San Francisco was established (by reference to news dispatches) as May 6, and the publication in the *World-Telegram* of the story about the Duclos article was given as May 22. Accordingly, the whole point of Budenz's testimony here, is to connect Manuilsky with the events that followed publication of the Duclos article.

To this end, Budenz further related that he opened Starobin's letter and started to read it, but before he finished it the letter was taken away by defendant Jack Stachel and he never saw it again. But he had seen enough, he said, to show that Manuilsky had talked to Starobin about precisely this matter. According to Budenz, Manuilsky said "that the French comrades had been given the commission to instruct the American comrades as to how to act in these matters." Following this lead, Gordon constantly phrased his questions so as to exploit the "international network" implication of Budenz' story. He persistently put into his subsequent questions the expressions, "the French comrades," and "the American comrades." Thus, referring to the *Daily Worker* of May 24 in which the Duclos article was first printed, Gordon asked:

"And in that issue is there published anything by a French comrade?"

In this manner, the prosecution "established" that the subsequent events happened on "orders from Moscow." But the whole record of the trial contradicts this tale. It shows that the American Communists made their own decisions to such an extent that they could fall, unchecked, into what they themselves later characterized as a completely wrong policy. The "secret" communication of "orders" by Manuilsky to the American Communists between May 6 and May 22 (by the "safe" medium, incidentally, of an ordinary, uncoded letter) is a fabrication that fails to explain two facts: 1. Why Duclos' criticism of the American Communists was not secretly com-

municated; 2. that it was openly published well *before May* 6 in the April issue of the magazine *Cahiers de Communisme.*

The prosecutor, however, is satisfied. He has explained the 1945 reorganization in terms of the government's arbitrary description of Communism. This description is distinctly old hat. So much so, that many years ago a well-known comedian laughed it out of fashion by doing a pantomine take-off on it. The comedian, Zero Mostel, did an elaborate silent routine of an American Communist getting up in the morning, going through the waking-up process and getting dressed, then going immediately to the telephone. There he is heard calling long distance; he asks long distance for Moscow and the Moscow operator for the Kremlin. When he gets the Kremlin, he asks for "Joe." And after all that build-up, he says, "Good morning, Joe! What do I do today?"

At any rate, for what it is worth, Budenz has now performed the first part of his assignment: to describe the 1945-1948 actions of the American Communists in terms of the "orders from Moscow" theory. There remains the second and harder task: to whittle down the involved and extensive body of Communist theory to the level of a Skid Row policeman's mind. The method chosen by the prosecutor to steer Budenz through this part of his assignment, was dictated by the nature and form of the indictment, which we have only briefly noted in earlier pages.

The indictment contains ten numbered paragraphs. These describe, one by one, the steps taken by the Communists to effect the reconversion of the Communist Political Association into the Communist Party of the United States in the spring and summer of 1945. The steps cited in the indictment include the calling of various meetings and conventions; the adoption of a preliminary resolution and a subsequent new party Constitution; the adoption of a program calling for party and non-party schools in which Marxism-Leninism would be taught and for books, articles, magazines and newspapers in which the same principles would be propagated.

Now here is the first extraordinary thing about the indictment: no one disputes the facts it cites! The defense merely denies that the cited facts constitute a crime. And this points to the second extraordinary thing about the indictment: you cannot lay your finger on the charge! In any indictment you expect to find a charge that certain clearly unlawful acts were performed at a stated time in a given place. A conspiracy indictment charges a number of persons with plotting to perform some similarly unlawful act or acts. In either case, everyone knows what the charge is and what will or won't serve as a defense. If a man is charged with breaking into and entering a house at 444 East 44th Street on the night of May 24, 1945, for the purpose of stealing jewels therein, you do not need a lawyer to tell you that the act charged is in itself unlawful. If eleven men are charged with conspiring to burn down the President's house, any layman can see that the plot is unlawful and the act plotted is unlawful. But this indictment is different: it charges only lawful acts!

In this indictment, eleven men (twelve in fact, but the case of William Z. Foster was "severed" because of illness) are charged with "conspiring" to organize meetings, newspapers and schools that they have every right to organize or agree to organize. These things they "conspired" to do are not only lawful acts, but acts the Constitution specifically forbids Congress ever to declare unlawful. No other specific acts are charged in the indictment. The defendants do not, it is obvious, deny the acts charged. And this leads to the third extraordinary aspect of the case: you cannot find an issue!

The indictment fails to allege a criminal act. The government is content to recite certain actions and say that each forms part of a continuous conspiracy to teach and advocate the overthrow of the Government of the United States by force and violence. The defense replies that this is not only poppycock but an attack on the Bill of Rights, an attack on freedom of speech and of the press and all the other freedoms

cited in the first eight Amendments to the Constitution of the United States.

What the indictment really says, is this: let's call the open, public activities of the Communist Party, a "conspiracy." Then let's put the Communists in jail for these activities. But one could hardly expect the government to give the game away by language of that kind. So the indictment uses some of the most involved sentences (the first sentence, paragraph one, of the indictment, contains 187 words) and curious language imaginable. It says that the defendants performed the various acts already described, "for the purpose of organizing the Communist Party of the United States of America, a society, group and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence."

"Marxism-Leninism" — that's the prosecution's secret weapon in this case! The indictment uses the phrase again and again. The defendants, it says, caused the Communist Party to adopt a Constitution based on "the principles of Marxism-Leninism." They planned to "publish and circulate . . . books, articles, magazines and newspapers advocating the principles of Marxism-Leninism." It was likewise "a part of said conspiracy that said defendants would conduct, and cause to be conducted, schools and classes for the study of the principles of Marxism-Leninism, in which would be taught and advocated the duty and necessity of overthrowing the Government of the United States by force and violence."

In the last sentence, particularly, "Marxism-Leninism" becomes the equivalent of advocating the violent overthrow of the government. Thus, by mere indirection, obliquely, the charge of conspiracy is propped up and the appearance of a case is maintained in the indictment. These sinister references to "Marxism-Leninism," also indicate how the prosecution must "prove" its case. It must persuade the jury that to teach "the principles of Marxism-Leninism" is to teach and advocate "the overthrow of the government."

But precisely here lies the quicksand. How shall the prosecutor venture on that ground? He dare not submit the whole mass of Communist theory, the library of Marxist literature, to the jury and say: "Here, now, study all this and decide that it adds up to unlawful advocacy." In the first place, the jury wouldn't know where to start. But beyond the practical difficulty of such a method, lies the political difficulty: to rest the case frankly on books and books alone would be a confession that the defendants are on trial for political heresy, not for plotting to burn down the President's house (as in Medina's hypothesis) or to take over the government by sudden armed assault (as the prosecution quite seriously alleges). To admit that it is a political trial would be fatal. It would follow that, under the Constitution, the government had no right to try the case in the first place. It is not proper to bring men before the bar of American justice because they believe, teach and publish a doctrine that condemns capitalism and advocates its replacement by Socialism.

This is the dilemma of the prosecutor. That is why he must somehow counter the effect created by introducing books into the case. That is why he puts his faith in Budenz. He uses Budenz for all he is worth—no, that is a dubious formulation. He used Budenz for many days; his testimony fills pages 1338 through 2614 of the stenographic record. Almost 1300 pages—say five books this size!

Yet the real mission of Louis Budenz is fulfilled when he has uttered one sentence! He is called upon to pronounce a one-sentence interpretation of the phrase "Marxism-Leninism." One sentence carefully wrapped up in 1277 pages of testimony! And in smuggling that one sentence into the record, the Court and prosecutor and witness combined to perpetrate as ugly a legal swindle as this country has ever seen.

What was the content of that sentence? Budenz was asked to state and did state, his *opinion* as to the *meaning* of Marxism-Leninism. Thus there went into the record as *evidence,* that which was not and could not be evidence—a mere *con-*

clusion, Louis Budenz' *interpretation* of the meaning of Marxism-Leninism. The opinion and conclusion of Louis Budenz as to the meaning of the whole vast library of Communist writings embodying the principles of Marxism-Leninism, by some strange coincidence, exactly corresponded to the opinion and conclusion of John F. X. McGohey, United State Attorney for the Southern District of New York. It likewise exactly followed the characterization of Marxism-Leninism repeatedly made in the indictment. Here is Budenz' magic sentence as recorded at page 1809 of the stenographic minutes of the trial:

"In the United States this would mean that the Communist Party of the United States is basically committed to the overthrow of the Government of the United States as set up by the Constitution of the United States."

By admitting this sentence into evidence, Judge Medina ended the trial for all serious purposes. What a marvellous trick this is! It avoids the necessity for evidence and for a jury as well. The "proof" of the defendants' guilt is "established" by the mere say-so of Louis Budenz! This one sentence is not only the substance of the testimony of Budenz, but it is the whole substance of the government's case from beginning to end. All the rest of the testimony is pure atmosphere. The indictment and the prosecution case alike, rest on a difficult question: what is the meaning of Marxism-Leninism? The long and complex readings suggest how hard it will be to get a definite answer to that question, to find one interpretation that will exclude all others and convince a jury beyond a reasonable doubt. But now this central problem of the trial has been wrenched from the hands of the jury. It has been turned over to a prosecution witness and he has been permitted to say, as a matter of *evidence,* "Yes, Mr. Prosecutor, your interpretation is the right one; the interpretation of Marxism-Leninism in the indictment is correct." The trial continues, but the issue has been foreclosed.

Let us turn now to the courtroom to see this swindle transacted. The prosecutor opens a series of questions on the

Constitution adopted by the reorganized Communist Party in 1945. The first sentence of the preamble is read; it says:

"The Communist Party of the United States is the political party of the American working class, basing itself upon the principles of scientific Socialism, Marxism-Leninism."

The prosecutor asks Budenz what that means. Defense Attorney Gladstein is on his feet at once. To ask the witness what it means, he says, "amounts to an invasion of the province of the jury. It is for the jury to decide."

"How will they know what Marxism-Leninism is referred to there unless somebody tells them?" replied Judge Medina.

In the continuing argument, Attorney Isserman elaborated the defense objection. "The record already indicates," he said, "that Marxism-Leninism, or scientific Socialism is a body of ideas of vast scope and extent. That is indicated already by the documents that have been put into evidence by the government and from the quotations read to the jury and the balance of the articles not read to the jury. There is no evidence that this witness is qualified to testify on the meaning of a body of ideas such as Marxism is composed of.

"Moreover, any definition of that meaning would be one that would take a person qualified over a considerable period of time to explain with reference to the vast body of writings which compose Marxism-Leninism."

Judge Medina overruled all defense objections and, taking the matter out of the hands of the faltering prosecutor, forced the pace himself. "In the context we now have in evidence here," he said, "there is no reason whatever why this witness may not explain to us what was the common understanding between him and his fellow-Communists of this sentence."

Sacher objected even more heatedly to the Court's comment than to the question itself. He protested that the defendants were not charged "with such interpretations and meanings as this witness may give to Marxism-Leninism or anything else. Nor are they charged with conversations and closet interpretations between Mr. Budenz and anybody else," an obvious

reference to pre-trial preparation of the testimony by Budenz and McGohey.

Medina pressed on. "Mr. Budenz, what did you, in connection with the other Communists that you were working with there, understand that to mean?" Further emphatic protest by the defense blocked an answer until after the noon recess on March 29, when Budenz at last succeeded in executing his mission by putting the following answer into the record:

"This sentence, as is historically meant throughout the Communist movement, is that the Communist Party bases itself upon the theory and practice of so-called scientific Socialism as appears in the writings of Marx, Engels, Lenin and Stalin . . . who have specifically interpreted scientific Socialism to mean that Socialism can only be attained by the violent shattering of the capitalist state, and the setting up of a dictatorship of the proletariat by force and violence in place of that state. In the United States this would mean that the Communist Party of the United States is basically committed to the overthrow of the Government of the United States as set up by the Constitution of the United States."

Now let us see where we stand. We have already heard the defense barred from showing what it holds Marxism-Leninism to be—the actual activities, writings and speeches of the defendants. Judge Medina frequently asserted that he had permitted a good deal of this, had been very generous, in fact, in allowing defense testimony and cross-questioning on such matters as Jim Crow, the labor movement and other things in connection with which the defendants had been "good boys." But always he allowed this as a kind of favor with the express statement that these were "collateral" or "peripheral" issues. But there's the rub! No side question but the heart issue is involved here; the real meaning of Marxism-Leninism is expressed in a vast body of literature inextricably interwoven with day-to-day activities in a hundred fields of workaday struggle. All this the witness has been allowed to exclude

from the jury's contemplation by his simple assertion that Marxism-Leninism is nothing but the violent overthrow of the government.

The defense, in a motion to strike out Budenz' definition, makes that point. The definition has no place in the record because "it is invading the province of the jury in deciding the ultimate issue in this case—in prejudging that decision." Denied.

The Budenz definition was given in March and the key lines appear on page 1809 of the stenographic record. Approximately five months later, defendant Robert Thompson took the stand. He was asked the same question put to Budenz, and the following took place, as recorded on pages 11,818 and 11,819 of the record:

(From the record)

GLADSTEIN: Will you state to this jury what is Marxism-Leninism?

MCGOHEY: Objection.

MEDINA: Sustained.

GLADSTEIN: May I call your Honor's attention to the state of the record—

MEDINA: No, I don't want to hear any argument about it.

GLADSTEIN: But, your Honor—

MEDINA: I will hear what this witness directed to be taught, resolutions that he voted for setting up the schools and what was to be taught in the schools, and when the time comes, if it does, for him to testify what he taught and in particular schools, within certain limitations I will permit. I do not conceive the question before us to be one which makes that question relevant.

GLADSTEIN: Would your Honor notice that in the record your Honor permitted the witness Budenz to be asked precisely that question and to give an answer to it?

MEDINA: You know, I just told you I didn't desire to hear argument but you wanted to get that point in and so again you have become contemptuous. Go ahead.

GLADSTEIN: May I ask the witness the very same question that Mr. McGohey asked, your Honor?

MEDINA: I tell you, Mr. Gladstein, again, I do not desire to hear argument.

GLADSTEIN: I do not want to argue but I am asking permission—

MEDINA: No, you are arguing, and you are again contemptuous.

* * *

A lavish cross-section of Marxist-Leninist theory may be found in the trial record. There it stands for the jury to consider. In the Federal courts, the judges have the right not only to expound the law but to comment on the evidence. They do not, however, have the power to delegate that right to a witness. That is exactly what Judge Medina has done: he has permitted Louis Budenz not only to comment on the evidence but to sum up the case. And worse: his summary has been offered and accepted as evidence submitted by an authoritative witness.

"Who would know," Judge Medina argued in the presence of the jury, if not this man "who was right up there" working with the defendants?

A man who was working with the defendants would know, but a man who is a defendant either wouldn't or it won't do him any good; Judge Medina isn't going to let him tell.

Well, the case is in the bag. And so, too, is the Bill of Rights if the Supreme Court—or the people—of the United States permit this legal lynching to go unchallenged.

Chapter 10

LOUIS FRANCIS AESOP

Anything "went" in the Communist conspiracy trial. The star witness was even permitted to relate one of Aesop's fables in modern anti-Communist dress. The purpose of his fable, and of the government in bringing it into "evidence," was to support Budenz' previous definition of Marxism-Leninism. The prosecution definition was well tailored to fit the indictment, but it hung very loosely on the evidence. For the evidence included Communist books and documents which forbid Communists, in the most explicit terms, from engaging in any of the cloak-and-dagger nonsense alleged by the prosecution. There are several such clear disavowals in the 1945 Constitution of the Communist Party of the United States.

It was Budenz' job to talk his way out of that language, and he called Aesop to his aid. History is so full of such attempts to twist the clear meaning of written words, that I can also borrow a reply to the Budenz fable from a book on my shelf. It is a single sentence inscribed as the motto of a miniature edition of Dante's *The Divine Comedy: Dov' è piana la lettera non fare oscura glosa*—where the words are clear as sunlight, don't conjure up clouds of mysterious interpretation. For it was precisely the prosecution's purpose to drown the plain meaning of certain Marxist passages, in a sea of obscure commentary. It's a pity the witness was not acquainted with the work of Juan Ruiz, the archpriest of Hita, who told the classic story of an ignorant man turning meaning upside down.

In his fourteenth century book of verse, *El Libro de*

Buen Amor, the Spanish priest relates a fabulous history of how Rome obtained its culture. The rude Romans went to the civilized Greeks to ask for their code of laws. The Greeks replied that the ignorant Romans didn't deserve the law because they were incapable of understanding it. But under pressure they agreed to a test: a debate by signs. The Romans didn't know where to turn for a representative capable of facing the Greek philosophers, so they decided to choose the most bumptious yokel they could find and thus put the issue in the hands of God. They dressed the bumpkin in the rich garments of a Doctor of Philosophy and he took his place on the stand puffing fire: "Bring on the Greeks; I'll show 'em."

Came the learned choice of Greece and, with both nations watching breathlessly, he opened the debate with quiet confidence. He held up one finger—the one next to the thumb—and sat down. The yokel got up, all bluster, and pointed his thumb and two fingers, harpoon-like, at his adversary, then sat down drooling self-satisfaction. The Greek, for his second sign, extended his flat palm. The bumpkin replied with a clenched fist, his face the picture of uncomprehending stubbornness.

This ended the debate. The Greek wise-man turned to his countrymen and said, "The Romans deserve the law; I will not deny them their due." Asked what he had said and what the Roman had replied, the Greek gave this explanation: "I said there is one God. The Roman replied that He was One in three persons. I said everything is in the hand of God and he agreed that all is in His power. As soon as I saw that the Romans understood and believed in the Trinity, I knew they deserved the security of the law."

Those who asked the yokel, got quite a different and Budenz-like answer: "He said to me that he'd gouge out an eye with his finger and that got under my skin, made me boiling mad, I can tell you. So I answered him in his teeth (that's the way you have to talk to those fellows) that right in front of everybody, I'd poke out both his eyes with my two fingers

and break his teeth with my thumb. Then he said he'd slap me so hard my ears would ring in the New Year, and I answered I'd give him the kind of punch in the nose that he wouldn't forget all the New Years of his life. Well, when he saw he couldn't scare me and that I was too tough a customer for him, he decided he might as well quit threatening and he gave up."

Juan Ruiz sums it up as well for the Communist conspiracy case as for the censor who might misread his book: "There is no evil word here unless it be ill taken." It was precisely Budenz' assignment to misread those passages of the 1945 Communist Constitution that refuted his "definition" of Marxism-Leninism. Immediately, therefore, after the Court refused to strike that definition from the record, Gordon asked Budenz a curiously-worded question that only a well-rehearsed witness could have understood. Does the expression, "basing itself upon the principles of scientific Socialism, Marxism-Leninism," as it appears in the 1945 Constitution, have "any particular meaning with respect to other language which may appear and does appear throughout the Constitution?" Gordon asked.

"Yes, sir," Budenz replied without hesitation. "It implies that those portions of this Constitution which are in conflict with Marxism-Leninism are null in effect. They are merely window-dressing asserted for protective purposes, the Aesopian language of V. I. Lenin."

This passage not only has a rehearsed character, but the way had been opened for it by Judge Medina in one of his earlier, prejudicial remarks so frequently encountered in the record. He had said: "I also notice what strikes me as a curious way of expressing themselves in these articles and resolutions. It isn't always clear to me. I suppose somebody is going to explain that before we get much further in the case, because there are a lot of words that don't mean much to me. It seems to me like a special jargon that, maybe, is used in this particular subject."

The prosecutor seized on this invitation to let Budenz define such technical terms as *tailism, revisionism, renegade* (a word that should have made him blush), *exceptionalism,* and, as we have seen, *Marxism-Leninism* itself. Budenz' "definitions," even on their face, are not definitions; they are political attacks on the defendants in the familiar language of the lowest grade anti-Communism. The true meaning of the terms is a matter of the internal history of the Socialist and Communist movements for the past seventy-five or one hundred years. And it is recorded history—but Budenz has never read the records! Under cross-examination, he admitted that he had given the "Communist understanding" of "revisionism" and of the "renegade Kautsky," although he had never read the basic work, *Marxism and Revisionism,* a collection of articles by Lenin and Stalin used as a standard text on the subject by Communists.

Similarly armed with ignorance, he was able to extend his essay on "Aesopian language," defining it as "roundabout protective language based on the well-known writer of fables, Aesop." The first use of the term was ascribed to Lenin in his preface to his book, *Imperialism.* The preface explains that the book was written while Lenin was in foreign exile before the Revolution. To get the Czarist censors to admit the book to Russia, Lenin explained, he avoided certain terms and subjects. For instance, his study of imperialism deals largely with its economic side, whereas he would have wished to show pointedly how economic domination leads to capitalist-imperialist domination of political life at home and in the economic subject-countries. Moreover, he would have wished to give his illustrations in terms of the Czarist empire, but to get by the censor he had to say "Japan" when he meant Russia. In sum, said Lenin, he had to employ that "cursed Aesopian language" imposed by the censor.

Now what has all this to do with the American Communist documents under attack in this court? Those documents say "American imperialism" when they mean American impe-

rialism. They discuss not only the economics but the politics of American imperialism and do not disguise their hostility to it. Having no formal censorship to face, American Communists in 1945 availed themselves of the possibility of saying outright just those things Lenin could not say because of the censor. Under the prevailing conditions, they had no need of the "protective" and censor-evading "Aesopian-language of V. I. Lenin," and employed none.

If you read the record, you will find that Budenz reveals himself as a political mountebank. He simply labels every American Communist declaration of legitimate political purpose, "Aesopian language" and "window-dressing." But the record shows that identical or similar declarations are to be found in those very Marxist-Leninist classics, beginning with *The Communist Manifesto* of 1848, which were written beyond the reach of the censor. They contain the most explicit avowals of Communist revolutionary aims side by side with an outline of legitimate methods by which these aims are to be achieved. *The Communist Manifesto* and the 1945 Constitution of the Communist Party of the United States alike publicly announce that the Communists work for the absolute elimination of capitalism and its replacement by Socialism (which later develops into Communism). Both documents state that this can be achieved only by day to day struggles to improve the condition of the working-class, and by day to day education. Indeed, they insist that the struggle for democratic rights even as understood by capitalist ideologists, is an important part of the advance toward Socialism.

Curiously enough, the Manifesto not only explains this, but does so in language designed to give the lie to the Louis Budenzes of 1848 and to their Aesopian fables! "The spectre of Communism" haunting Europe, according to the very first sentence of the *Manifesto,* was a reference to what we call the "Red Menace" or "Communist bogey" today; that is, the policeman's-eye-view of Communism in a time of hysteria.

"Where is the party in opposition that has not been decried

as communistic by its opponents in power?" asks the second paragraph of the *Manifesto*. And it notes that the opposition tries to out-redbait its tormentors by hurling "back the branding reproach of Communism" with the utter recklessness we see even today. For in 1848, each party, says the *Manifesto,* redbaits the parties not only to the Left of it but even to the Right—even as the Republicans and Democrats of today. Precisely because of this redbaiting, Marx and Engels were commissioned to write the *Manifesto*. As that document puts it: "It is high time that Communists should openly, in the sight of the whole world, publish their views, their aims, their tendencies, and meet *this nursery tale of the spectre of Communism* with a manifesto of the party itself."

It is perfectly true that the *Manifesto* is the *revolutionary* program of a *revolutionary* party. It concludes with an avowal: "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. . . . Workers of the world, unite!"

That is the conclusion; all that goes before, the whole of the *Manifesto,* explains what Marx meant by "Communist revolution" and "the overthrow of all existing social conditions." In terms of Poland, Austria, Germany, France, Switzerland and the United States of that time, he specifically outlined the kind of legitimate political activities and education appropriate to Communist parties. His suggestions in the *Manifesto* add up to a campaign to win majorities by establishing "the union and agreement of the democratic parties of all countries." In the years that followed, Marx, Engels, Lenin and Stalin many times had occasion to repudiate the real Aesopian fable—that their theory contemplated handmade revolutions. Every Communist document of importance contains this repudiation.

The repudiation is explained in the greatest detail by

Lenin in a pamphlet called *Left-Wing Communism, an Infantile Disorder.* The major purpose of the pamphlet was to denounce flirtations with adventurist violence by certain groups of Dutch and other Communists. He said there could be no revolution until the people as a whole have reached the limit of their power to endure suffering from the evils of the old system. Even that, he said, was not in itself enough to permit a revolution.

"It is not sufficient for revolution that the exploited and oppressed masses understand the impossibility of living in the old way and demand changes." It is also necessary that conditions be so critical the ruling classes "cannot continue in the old way," or that there be "a national crisis, affecting both the exploited and the exploiters." Here indeed is the reference to a "crisis" on which the government makes much of its case. But the next sentence shows that the crisis contemplated is one in which a *majority* desires to and can overthrow a government. "For revolution it is essential, first, that a majority of the workers (or at least a majority of the class-conscious, thinking, politically active workers) should fully understand the necessity for revolution, and be ready to sacrifice their lives for it. . . ." The sense of the word "majority" is qualified here, but go on to the next words and it becomes clear that, as Lenin understands it, this limited majority—the majority of the more active workers, could not if it would, carry out a revolution against the will of the actual majority of the population or even in the face of majority apathy. For the sentence above concludes: ". . . secondly, the . . . ruling classes [must] be in a state of governmental crisis, *which draws even the most backward masses into politics.*" Only when the crisis stirs the normally inactive masses into action against the government can the advance guard of class-conscious workers lead a revolution.*

In a series of lectures published as *Foundations of Lenin-*

* On this point, see Appendix, The Schneiderman Case.

ism and duly introduced by the prosecution in this trial, Stalin quoted, approved of and enlarged upon these ideas. As expressed above, the evidence shows, they were taught in Communist schools here and quoted in Communist speeches and publications. They reflect an elementary truth of history understood by serious students of history from Thomas Jefferson to J. V. Stalin: that you cannot "make" a revolution; you cannot tell a revolution when to happen. Jefferson wrote the basic thought into the Declaration of Independence which affirms the right of revolution. The Declaration says that a government rests on the consent of the governed and the aim of government is to protect certain "inalienable rights" of the individual, rights that add up to "life, liberty and the pursuit of happiness." Now, in the words of the Declaration:

"Whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

In short, the people have the right to overthrow any government and replace it with a government of their own revolutionary choosing. Abraham Lincoln said it so forcefully it should be remembered for all time:

"Whenever they shall grow weary of the existing government, they can exercise their Constitutional right of amending it, or their revolutionary right to dismember and overthrow it!"

To get the people to exercise that right is another matter; they are slow to kindle, or as the Declaration puts it:

"Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

And that is why only the ignorant could counsel a revolu-

tionary party to rely on adventurous "risings" or armed forays by cutthroat bands. Relying on history, the Communists have put away such childish toys and they forbid any Communist to play with them. Budenz labels the Communist words of warning, "window-dressing." But there is no reason to look for some mysterious meaning in them or find in them any contradiction with the avowed revolutionary aims of the Communists. They merely express the belief common to Thomas Jefferson, Karl Marx and serious political scientists of our day, that a revolutionary party cannot *make* revolutions but can prepare for the coming of revolution by nonviolent everyday work and education.

Another "political scientist" who held that Marxism employed an Aesopian language, was—Adolf Hitler! On page 25 of the Houghton-Mifflin 1937 edition of *Mein Kampf* in English, Hitler describes how his conversion to anti-Semitism enabled him to see the "realities" of Marxism behind "the theoretic claims of the first apostles of Social Democracy." In the Budenzian language of Hitler: *"It had taught me to understand the verbal methods of the Jewish people, whose aim is to hide or at least to cloak their ideas; their real objective is not to be read on the lines, but is tucked away well concealed between them."*

The Court and prosecutor took a certain risk in borrowing from Hitler, for the latter bases his hatred of Marxism on its fundamental concern for democracy, its refusal to tolerate minority coercion of the majority. The page quoted above goes on: "The Jewish doctrine of Marxism rejects the aristocratic principle of Nature, and in place of the eternal privilege of force and strength sets up the mass and dead weight of numbers." How one professional anti-Communist persists in contradicting another!

Judge Medina nevertheless prodded Budenz to interpret away every passage of the 1945 Constitution that disavowed minority violence. Article 9, Section 1 and 2 of that document say:

"Conduct or action detrimental to the working class and the nation, as well as to the interests of the Party, violation of decisions of its leading committees or of this Constitution, financial irregularities, or other conduct unbecoming a member of the Party, may be punished by censure, removal from posts of leadership, or by expulsion from membership. . . . Adherence to or participation in the activities of any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy, whereby the majority of the American people can maintain their right to determine their destinies in any degree, shall be punished by immediate expulsion."

Of course the defense protested against permitting Budenz to take away from the jury the task of interpreting this (as he had already done with other and vital matters). But once again Medina took over the prosecutor's role and gave Budenz the chance to say that those passages are "purely Aesopian language for protective purposes to protect the Party in its activities before courts of law in America while it could continue the theory and practice of Marxism-Leninism."

This is not and cannot be evidence. It is nothing but anti-Communist agitation. Budenz was not asked to and did not testify that he ever heard the defendants discussing this passage during the process of drafting the Constitution. He did not testify that they said it should be put in for protective purposes. He merely asserted, on his own, that it *is* "window-dressing." And Medina calls that "evidence!" The Judge does feel, however, the necessity of explaining why he admitted these outrageous "interpretations," but his explanation is merely additional anti-Communist agitation. He says that it was necessary to admit Budenz' "testimony" because the language of the Communist Constitution "looked a little peculiar to me."

In this general atmosphere of complete hostility to the

defense, Budenz is permitted to stretch his "Aesopian" fable beyond the limits of sanity. During cross-examination, when he was asked to show how (as he testified earlier) he had preached force and violence in his *Daily Worker* articles, he offered the shadow of a shadow of a shadow. Pointing to an article that appeared April 12, 1945, he said that "since Aesopian language has to be used," he recommended in the article the reading of an article in the monthly magazine, *Political Affairs.* That is Shadow No. 1. The article, by defendant John Williamson, in turn urged the reading of *The History of the Communist Party of the Soviet Union* (Shadow No. 2.) "And every Communist knows," said Budenz, supplying Shadow No. 3, "that when you begin to read *The History of the Communist Party of the Soviet Union,* you begin to commit yourself to the Leninist line."

According to this gibberish from the anti-Communist madhouse, if you urge a person, in unequivocal language, to read Marxist classics with the avowed aim of inducing him to become a Communist, you are using "Aesopian language." If you urge reading the Bill of Rights—upon which the defense relies strongly in this case—you are using "Aesopian language." And Budenz continued in this vein, unchecked by the Court. Asked if there was anything about force and violence in the discussion between June 1945 when the Communist policy-change began and October 10, 1945 when Budenz left the party, this transpired:

(From the record)

BUDENZ: There was no specific reference to the overthrow of the government by force and violence but the whole discussion in the *Daily Worker* was over that question.

GLADSTEIN: Was over what question?

BUDENZ: Over the question of adopting the Marxist-Leninist position, the Leninist line, which is the overthrow of the Government of the United States by force and violence.

GLADSTEIN: Did it say anywhere in the *Daily Worker* that

the Marxist-Leninist line is the overthrow of the government by force and violence?

BUDENZ: Of that I cannot be sure but every Communist knows what the Marxist-Leninist line is.

* * *

If there were any logic in the conduct of this trial, Budenz and the prosecution would have been held to have overreached themselves at this point. For as cross-examination continued, Budenz similarly identified the language of certain 1944 election articles in the *Daily Worker* as "Aesopian." But that is the period when, according to the prosecution theory of the case, the Communists had *abandoned* the Marxist-Leninist or "violent" line and therefore had no need for "protective" language or "window-dressing." The defendants are indicted on the charge that later, in 1945, they reorganized the Communist Party and returned to the Marxist-Leninist line. Yet Budenz says Browder's language in 1944 is just as "Aesopian" as Foster's in 1945. There is no reason for this to trouble the Court. Having swallowed the Aesopian camel, why should Judge Medina strain at an FBI gnat?

Indeed, this courtroom has no place for logic. We have seen the prosecution case begin as a melodrama, slow down to the pace of a documentary, recover, then turn into a farce. Now we shall see the testimony of Louis Budenz on "Aesopian language" degenerate into burlesque. In the last hours of cross-examination, defense attorneys read to the witness selections from the letter written by Foster to the Communist leaders in 1944. The letter was already in the trial record, and Attorney Sacher was asking the questions. The witness would not give direct answers and the defense objected to replies that were long anti-Communist essays in the guise of "explanation." Judge Medina defended the witness:

"The way it is Aesopian is what he wants to explain," said the Judge. "But you don't want the explanation. That is all right. It can be brought out on redirect."

This prodding gave the jury the impression the defense

had something to hide, so a little later Sacher decided to let Budenz "explain." The attorney had just read a long passage in which Foster said the Roosevelt Administration was an anti-monopoly coalition and big capital hated it. Sacher asked Budenz if that was "Aesopian."

(From the record)

BUDENZ: Yes, sir. May I explain? . . . That this was hanging on to the Roosevelt Administration in Aesopian language because the very same organization had condemned Roosevelt strongly when it served Soviet policies to do so and Communist principles to do so. Therefore, their standing behind Roosevelt at this time was not merely part of that effort to influence people to adopting Roosevelt, since they had condemned Roosevelt specifically as being against trade unions, as destroying social security, and as bringing about Hitlerism during the period of the Hitler-Stalin Pact; there could be more explanation of that but, beyond that, through this effort, the idea of the force on force concept, which Duclos brings forward as essential, is being brought forward."

* * *

If this means anything—and though I have read the Duclos article I cannot understand the last reference—it means that Budenz considers the Communists were dishonest opportunists when they backed Roosevelt because they didn't always back him. But what in the world has that to do with "Aesopian language?" If the Communists appealed to the American people to support Roosevelt at a time when their real purpose was to get the people to oppose Roosevelt, their language might legitimately be calld "Aesopian." But the witness does not pretend that was the case; he charges only that sometimes they did support Roosevelt and sometimes they didn't. When they did, they said so; when they didn't, they said that, too.

It goes on and on like that. Another passage was read and Budenz said it was "Aesopian" and again explained. "It is Aesopian because there isn't a thing said about the expansion

of Soviet imperialism. . . . To read this, one would imagine that only American imperialism were expanded." Sacher read another sentence about American imperialism and Budenz said it, too, was "Aesopian" "because it says nothing about the Soviet imperialism appetite being whetted, which is never criticized in any Communist document and, therefore——"

Sacher cut him off to ask if he did not wish to modify his definition of "Aesopian language" so as "to cover anything which is less than complete in your mind." The witness did not answer, but that does not matter. It is clear that he has engaged in vulgar verbal trickery. His original "definition" of "Aesopian language" said it was phraseology intended to mean one thing to the initiate and another to the novice—a surface meaning for the general public and a secret meaning for the full-fledged Communist. He has so far shifted his ground that, in the end, anything a Communist says is styled "Aesopian language." But this is nothing better than name-calling!

Book Three: The Reptile Tribe

"And slimy things did crawl with legs,
Upon a slimy sea."
—*Rime of the Ancient Mariner.*

Chapter 11

APOSTLES OF JUDAS

Calling names doesn't require much character. Therefore Louis Budenz was well equipped for the job. Under cross-examination he revealed that he had never had a conviction so strong that he obeyed it before making sure which side his bread was buttered on. He did not leave the Communist Party—for all the supposed fervor of his reconversion to Catholicism—until he had obtained the guarantee of a job as a professor at Notre Dame University. He also took everything he could get from the party between the time he made up his mind to leave and the time of his actual leaving. And since his departure he has made a very good thing of his status as an ex-Communist. On all this, I shall let the record speak.

It is necessary, however, to explain why this tarnished hero's personal traits should be worth our time. There is only one reason: that they are not personal! The renegade, an inevitable figure in the political trial, has certain characteristics; it is the mark of the renegade, not the life of Louis Budenz, that interests us here.

The appearance of the renegade on the witness stand is a national danger-sign. First, it warns that hysteria has so far lowered the public moral standard as to endanger normal standards of fair play. Second, it is the signal that sedition laws are eating away "due process" and therefore removing all democratic safeguards against abuse of power by the men in power. After World War I, during a nationwide wave of anti-radical violence and judicial lynching, California provided a memorable illustration of the place of the renegade in the political heresy trial.

The Industrial Workers of the World, the IWW, was the principal target in California. Under its 1919 Criminal Syndicalism Act, the state made 504 arrests in five years, held every arrested person in $15,000 bail and actually brought 264 of them to trial. One trial was used to bring another: the court would not accept a non-member as an expert witness, so other members would be called to testify—and arrested as they left the courtroom. (There is history behind the tactics of Prosecutor McGohey and Judge Medina in demanding that defense witnesses, under cross-examination, *name* fellow-Communists. There is history behind the witnesses' stubborn refusal to do so.) The witch-hunting forces in California found even these wholesale arrests too slow, so the state Attorney General obtained a "temporary" injunction which, in effect, ordered the IWW to cease functioning pending hearing.

And on what basis did the court suppress the IWW in advance of trial? On the affidavits of three renegades who, of course, had not yet been subject to cross-examination. They were not only renegades, but professional witnesses—renegades turned professional informer. In his *Free Speech in the United States,* Zechariah Chafee, Jr., a noted Professor of Law at Harvard University, dismisses one of the affidavits as having no bearing on the case and says:

"The other two affidavits were by two former members of the IWW, whom the state used to trot out in almost every IWW prosecution. Of these two renegades, the California

Court of Appeal said, in a case the following year, that their testimony had been received in every case reviewed by that court in the past three or four years, and that they went over practically the same ground as in previous trials. One of these witnesses is mentioned in ten appellate opinions as the chief witness for the state as to the criminal activities of the IWW, and the other in eight such opinions."

The testimony of these renegade-informers bears the character-stamp of the testimony in the Communist conspiracy trial where the witnesses are also renegades or informers—so far as concerns Budenz, renegade *and* informer—like the IWW witnesses. Chafee, writing in 1941, could not have been commenting on the testimony of Budenz and his colleagues —but he might as well have been:

"I do not recall any appellate opinion in which a single prisoner was charged by witnesses with himself committing or participating in the destruction of property or personal injuries, or even with directly inciting such acts by speeches. . . . It is always some other members of the IWW who are said to have committed or incited destructive acts, and not the prisoners at the bar."

And as Chafee continues, note that the use of the Aesop's fable trick was not new in the Communist conspiracy case:

"Even the wording of the documents became milder after the statute was passed, but the state met this by evidence that members of the IWW had said this was camouflage."

Everything Chafee has to say about the California renegade-informers' testimony, applies to this trial:

"Aside from the suspicion which must always rest upon such professional witnesses . . . almost everything they said related to acts [before passage of the law under which the defendants were tried], none of them committed by the present defendants, and the contents of IWW pamphlets which had been long in circulation."

Even the renegades offered little to suggest need for the emergency procedure followed. Of the three affidavits one

contained a single paragraph offering the pretext; the witness said that in 1922 he had been a member of an "Inner Circle" of the IWW, whose members were designated to murder jurists and prosecutors. Of the character of the witness who asserts this, Chafee says the following:

"One of these two renegades, a Los Angeles policeman and thrice a former member of the IWW . . . stated on the witness stand [in another IWW case] that he 'had never told the truth before in his life,' 'admitted participation in numberless atrocious offenses,' and was judicially characterized as showing himself to have been 'one of the most reprehensible characters thinkable.' "

One does not have to go back to the 1920's for examples of the kind. During the progress of the Communist trial, in the very building where it was held, a similar admission was made by a renegade-informer witness in the Alger Hiss case. The witness, Whittaker Chambers, confessed to systematic lying during his alleged career as a "Communist espionage courier." But this was represented as proof that lying is an accepted part of Communist activity, not as an inescapable fault of the witness' character. Under cross-examination, however, Chambers was forced to confess a series of perjuries *after* he left the Communist Party and became an active anti-Communist, and even to admit that he committed perjury before the Grand Jury that indicted Hiss—on the strength of his perjuries!

Unlike the cross-examination of Chambers, that of Budenz was severely curtailed by the Court. We shall have to take it for what it yields. To begin with, Budenz admitted that he had fully decided by May or June of 1945 that he must, on principle, leave the Communist Party and the *Daily Worker*. But he did not leave until October, continuing to draw his wages from the movement he presumably now despised.

(From the record)

GLADSTEIN: During the time you were working there and

pretending to be a loyal Communist, although you had already made up your mind to leave the Communist Party, did you borrow money from them?

BUDENZ: No, sir.

GLADSTEIN: You did not?

BUDENZ: No, sir.

GLADSTEIN: Why isn't it a fact that you did?

BUDENZ: Borrow money from them? No, sir.

GLADSTEIN: Yes. At that time you were indebted to the Communist Party, weren't you?

BUDENZ: I wasn't indebted to the Communist Party. I had perhaps—this was covered by expenses.

GLADSTEIN: Were you in debt to the *Daily Worker*?

BUDENZ: Not that I can recall, no.

GLADSTEIN: Did you borrow money from the *Daily Worker* after you decided to leave the Communist Party?

BUDENZ: That I cannot recall.

GLADSTEIN: Isn't it a fact that you did?

BUDENZ: I say, I can't recall that.

GLADSTEIN: Isn't it a fact you were in debt over $800 to the *Daily Worker* at that time?

BUDENZ: I can't recall that, no, sir.

GLADSTEIN: Can you recall, isn't it a fact you were in debt regardless of whether you can recall the amount?

BUDENZ: This was against—there was an amount, I don't know what the amount was, but it was against expenses that I had incurred and things of that character.

GLADSTEIN: Isn't it a fact you did borrow money and you were paying back on the loan from time to time?

BUDENZ: May have been.

GLADSTEIN: Yes!

MEDINA: Well, when you decided to leave, and you were there without telling them, did you go ahead and borrow money from them, after you decided to leave?

BUDENZ: I don't recall that, no, your Honor.

GLADSTEIN: There is no question at all, is there, sir, that

you had decided to leave the Communist Party long before August 4, 1945? That is clear, isn't it?

BUDENZ: Yes, sir.

* * *

Gladstein thereupon introduced into evidence a check, and Budenz after stalling as long as possible, acknowledged his signature as endorser. The check was dated August 4, 1945. It was made out to Budenz by the Freedom of the Press Co., Inc., publishers of the *Daily Worker,* and specifically stated on its face that it was for the purposes of a loan.

(From the record)

GLADSTEIN: Isn't it true that when you left the *Daily Worker* you owed them $899.94?

BUDENZ: I am not certain of that, counselor, no, sir.

GLADSTEIN: You don't know the amount, that is what you are uncertain about?

BUDENZ: That is right.

GLADSTEIN: Have you ever paid back the amount you owed them?

BUDENZ: No, sir. I should be glad to do so, if it were necessary.

* * *

At the next opportunity Budenz again vaguely inserted a reference to some part of this money being "against expenses," and when Gladstein insisted on separating the two matters, the Judge intervened in an obvious effort to rescue Budenz. Medina remarked that Gladstein's repetition, in his questions, of the word "loan," against the witness' reference to "expenses," couldn't change the witness' testimony. But this was a rescue that failed: several questions later, the evasive witness was forced to admit that when he got a loan, his checks showed it as a loan. Medina asked the stenographer to reread that admission, and then he asked Budenz if that was the case.

(From the record)

BUDENZ: Yes, sir.

MEDINA: Every time?

BUDENZ: Well, I can't say every time.

MEDINA: That is what you are saying.

BUDENZ: Well, I mean to say so far as I can recall.

* * *

Ultimately, all efforts to rescue Budenz were wasted. He tried to follow the Court's hint, and in further answers suggested that loans and expenses might not always be differentiated. But this wouldn't stick. The defense produced another check. This one was dated October 5, 1945 and was in payment of Budenz' wages. On the back of the check, above the endorsement identified by Budenz as his, were a series of accounting entries. One of the entries specified $3.00 deducted from his wages toward repayment of a loan. Budenz was now beyond salvation and the Judge was himself in deep water.

(From the record)

MEDINA: Will you let me have that check?

GLADSTEIN: Yes, your Honor, I will do that.

MEDINA: Who put that word "loan" on there, on this Exhibit P, Mr. Budenz? Do you recognize the handwriting?

BUDENZ: No, I don't, your Honor.

MEDINA: Did you borrow the money?

BUDENZ: That I am not certain of, your Honor.

MEDINA: Even with the check right there and your signature on it?

BUDENZ: Well, it may have been that I borrowed it but this is in regard to——

MEDINA: Well, it certainly looks like it.

* * *

The following day, the defense again pursued the issue of the loan versus the alibi of "expenses." It was established that the accounting entries on the October 5 check specifically

showed an addition to Budenz' wages of $15 for "expenses," as well as a separate small plus-payment for a book review, aside from the $3.00 deduction shown as loan-repayment. Thus the documents recalled what Budenz could not or would not remember: that he had borrowed money from the *Daily Worker* at a time when he was planning to leave and would not be able to repay it from his wages. The cross-examination continued:

(From the record)

GLADSTEIN: Now, Mr. Budenz, this check, Exhibit Q, is dated October 5, 1945, and it shows that it was made in payment of your wages up to and including October 11. You asked for your salary in advance that week, didn't you?

BUDENZ: Yes, sir.

GLADSTEIN: And you didn't go down to the office of the *Daily Worker* that last week, did you?

BUDENZ: Not from Monday on. I was ill. I mean Tuesday.

GLADSTEIN: And you knew you were leaving the Communist Party and the *Daily Worker* about the 10th of October, didn't you?

BUDENZ: Yes, sir.

* * *

For many days Budenz had been an aggressive, contentious witness. His manner had been that of a witness who has the offensive. But he now underwent a change. He seemed to be trying to disappear through the back of the witness stand; his voice became inaudible and it was the prosecutor who had to say sharply, "Keep your voice up, please, Mr. Budenz." The witness, however, continued to have voice trouble as other checks were introduced showing that, aside from getting his last salary-check in advance—for a week of work he did not do—he had, on October 4, telephoned to get an additional check for expenses and medical aid. This—a further favor sought as a comrade from his comrades—took place

during the week already set by Budenz' new mentors for the triumphant announcement that he had withdrawn from the Communist Party and returned to the Catholic Church.

The attorneys next directed their questions toward another aspect of the relationship of the renegade-informer to his new job of professional witness: the material rewards or job-insurance, the "price" of the informer. Budenz was as evasive as ever and, as ever, the Court permitted his nonresponsive and argumentative answers to stand. When Gladstein, so handicapped, nevertheless pressed for a "Yes" or "No" answer to a yes-or-no question, Medina rebuked him for "emotional excitement and pressing people and talking fast and all of that." That did not, however, induce the defense to abandon the pursuit of the elusive answer:

(From the record)

GLADSTEIN: You arranged, however, for a job before you left the Communist Party?

BUDENZ: Oh yes. I had a family to take care of.

* * *

The job was identified as a professorship at Notre Dame, but questions to show that he did not have the educational and other qualifications of a professor were barred. His whole history, however, reveals no such qualifications, a further indication that the job was a bribe, a payment to the informer for his desertion of the party and his subsequent services as a professional witness against it. The Court sustained all objections to questions about articles Budenz wrote for commercial magazines, that is, other income derived from his new profession of "saying many of the things you have testified to here." The same barricade was raised against questions designed to show that Budenz, like the witnesses in the California IWW cases, was a paid professional witness.

(From the record)

GLADSTEIN: Have you gone out to Seattle, Washington,

to give testimony, the same kind of testimony that you have given here for which you received a fee?

McGOHEY: Objection.

MEDINA: Sustained.

GLADSTEIN: Have you gone out to Honolulu in the Hawaiian Islands to give the same story you have given here for which you received a fee?

McGOHEY: Objection.

MEDINA: Sustained.

GLADSTEIN: Did you receive any money for doing any work for Congressman J. Parnell Thomas along the lines of your testimony here?

McGOHEY: Objection.

MEDINA: Sustained.

GLADSTEIN: During the years you were in the Communist Party——

MEDINA (interrupting): How does it affect a man's credibility, that he gave the same testimony on a number of other occasions?

* * *

This is characteristic of the Court's conduct in this case. Observe that Judge Medina's comment has the effect of misrepresenting the aim of the questions: it leaves out the key element—the fee, the money, the reward which is part of the informer's motive for giving the testimony his direct or indirect employer wants. It is part of the price of perjury.

Is that irrelevant? The professional, paid witness, earning direct fees or gaining payment through jobs, articles and books, was simply crawling through the woodwork of the forty-eight states in trial after trial and hearing after hearing at that very time. Some months after the Budenz affair, but still in the course of the trial, Alexander Bittelman, a Communist leader who was not a defendant, was summoned to a hearing on deportation charges. The *New York Times* of August 2, 1949, in a brief story about the hearing, said:

"The only witness yesterday was Charles Baxter, former

minor party functionary from Cleveland, who left the party in 1945. He testified that he attended the Lenin School in Moscow and that the ultimate aim of the party was the 'revolutionary overthrow by force of capitalistic states.' On cross-examination, Mr. Baxter admitted that he received a temporary job as clerk in the Cleveland Immigration Service before he testified in ten deportation cases involving alien party members. As an expert government witness, he said he received $25 a day."

In a criminal wire-tapping case in New York only a few days later, the Court remanded defendant John G. Broady to prison for the duration of the trial because he offered a prosecution witness a job before the witness returned to the stand for the last time. Yet here we have the government shamelessly giving people jobs just before they appear as government witnesses, and the courts find nothing wrong with that! One of the witnesses in the Communist trial, William O. Nowell, admitted that he was given a job in the Immigration Service just a few weeks before the trial; the Immigration Service is part of the Department of Justice which is prosecuting the case!

Medina's reluctance to permit questioning on the subject of renegade-informers and professional witnesses, will easily be understood by anyone who knows how ugly their story is. It will equally be understood that the defense cannot simply accept the Court's ban on so vital an issue. For while Budenz soon completed his testimony and left the stand, twelve little Budenzes followed!

And that was inevitable. It had to be and it is important to know why. We do not need to know the life history of each of these sordid creatures, but we must understand what they are, where they come from and why they behave as they do. They are the symptoms of a serious sickness of the body politic. It is an old ailment, but more dangerous in these times than ever before. Long ago—in 1798—Edward Livingston, a

friend and follower of Thomas Jefferson, described the disease while denouncing the Alien and Sedition Acts, then about to be enacted by the Federalist Administration of President John Adams. Livingston was relating what he believed would happen after passage of those laws:

"The country will swarm with informers, spies, delators, and all the odious reptile tribe that breed in the sunshine of domestic power. . . . The hours of the most unsuspected confidence, the intimacies of friendship, or the recesses of domestic retirement afford no security. The companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber, are all tempted to betray your imprudent or unguarded follies; to misrepresent your words; to convey them, distorted by calumny, to the secret tribunal where jealousy presides, where fear officiates as accuser, and suspicion is the only evidence that is heard."

And as Livingston foretold, so did it happen.

Chapter 12

HYSTERIA

So it happened, and so it is happening again. Snooping, systematic informing, loyalty inquisitions, wiretapping, have become an accepted norm of what we still smugly call "the American way of life." On a day when the Communist trial, the Alger Hiss trial and the Judith Coplon trials were in simultaneous session like a three-ring circus or a witches' Sabbath, an advertisement in the *New York Times* brought home to me more forcefully than the trials themselves, the present spy-ridden state of affairs. The ad offered for sale an electronic device know as the *Teletap*. With this remarkable product of our remarkable technology, said the ad, a businessman can tell whether his telephone conversation is tapped at either end.

Yes, with the *Teletap* you are protected from the growing menace of the "snoop," the enterprising *Teletap* manufacturer assured his fellow free-enterprisers. But that is small comfort to the rest of us. We cannot afford expensive instruments to test whether we still have some small remnant of the privacy guaranteed to us by the Constitution of the United States. And tests are certainly needed. In the aftermath of the Hiss trial, it was learned that the FBI had been spying on the foreman of the Hiss jury all through that trial. One FBI report detailed a conversation between the foreman and his wife. If you think about it awhile, it will dawn on you that this must have been obtained by tapping the couple's bedroom wall!

That is the tone of the trials and that is the character of the evidence. In all these heresy trials, as in the Communist

trial itself, the spy comes into his own. The kind of chit-chat, malice, innuendo, supposition, and uncomprehended scraps of accurate information from public documents that are scrambled together in the FBI reports exposed in the Coplon case, are the spy's eternal stock-in-trade. The reports reek of perjury, blackmail—and murder. The month of June 1949 was particularly rich in FBIism. One Morton E. Kent, a former State Department employe, was hounded from his private job and thereupon committed suicide. It accidentally made news. It appears that the FBI reports on Kent had dragged in the name of Emilie Condon, wife of Edward U. Condon, head of the National Bureau of Standards and long an out-of-reach target of the House Un-American Activities Committee. When Condon hit back, the public learned how the FBI had ruined Kent.

First, by irresponsible and illiterate pieces of information, insufficient for open action against Kent, the FBI had "connected" him with "subversive" organizations or persons. An FBI agent thereupon "suggested" to Kent's employer that he wouldn't want to have a man on his payroll if the FBI regarded the man as subversive, would he? The employer needed export licenses from another government agency in his business, so he fired Kent. Kent, seeing no end of this process killed himself.

A signed editorial in the *Daily Compass* (June 13) by publisher Theodore O. Thackrey called this by its right name —a "secret police system, outside the law since it *is* the law, spying upon ordinary citizens, hounding them to death on suspicion of political heresy . . . a secret political police system [established] in this country by the perversion of the FBI from the law-enforcement functions for which it was originally intended into a keyhole peeping, wiretapping snoop and pry group, keeping its appropriations fat by feeding the witch-burning flames of political intolerance."

Kent was not the first. Harry Dexter White, former Assistant Secretary of the Treasury, died of a heart-attack August

1948 after denying the charges of Elizabeth Bentley, who shared with Whittaker Chambers the star dressing-room of the summer, pre-election, "spy" hearings. W. Marvin Smith, a government employe, plunged to death down a stairwell of the Justice Department Building, after he was named as the notary who witnessed automobile-sale papers mentioned in Chambers' testimony about Hiss. Laurence Duggan, former State Department aid, was killed in a fall from the window of his sixteenth floor office in New York City in December 1948.

Duggan's case underscores the irresponsibility of an ugly system that has many other hideous features. A man of conservative social background and New Deal inclinations, he was named by Isaac Don Levine, State Department-connected ghostwriter of many sensational anti-Soviet books, in secret hearings before the Un-American Committee. Levine testified to hearsay twice removed: he said the self-confessed perjurer, Chambers, had told him in 1937 that Duggan was one of his (Chambers') inside-the-government sources of information. After Duggan's death, Chambers denied he had ever told Levine that, and the FBI hastened to report that it had found Duggan "a loyal employe of the United States Government." But that won't bring him to life.

With just such irresponsible stuff the FBI has been able to compile dossiers on more than one million Americans. All to protect us from the encroachments of the Communist police-state! In the Coplon case, the reports showed all the familiar trickery of the police agent: the role of *agent provocateur;* the "planted" papers; the "decoy" papers falsely naming an employe of Amtorg (corporation buying and selling for the Soviet Government), as an American government agent; a report reversing that: it said Amtorg employes had spied for the Soviet government. Another document is even worse; it is a hash of spy "tips" thrown together to make a file on the noted film star, Fredric March. It tells how "Confidential Informant ND 402" carried a message from March to complain of being criticized in the *Daily Worker* and how "the subject had tears

in his eyes when he sent the message"; how "on November 27, 1945, Confidential Informant ED 324 advised that he had observed a throw-away advertising a meeting to be held in Madison Square Garden on December 4, 1945 at 8 p.m." and how later, "Confidential Informant ND 336" did attend that dread meeting (very secret, seating capacity 20,000) and did hear speakers Julian Huxley, noted British scientist and Henry Wallace, discourse on the menace of the A-bomb, and that Fredric March did there read a poem by the well-known radio-writer, Norman Corwin, captioned: "Set Your Clock at U-235." The hash includes similar sizzling secrets contributed by Confidential Informants T-3, 305, 336, T-6, T-8, T-7, ND 342, ND 359, ND 384, ND 388, ND 400, ND 403.

On the basis of similar information in the same month, Gordon R. Clapp, head of the Tennessee Valley Authority (TVA), was labelled "unemployable" by the Army. It turned out that Military Government authorities in Germany had sent to Washington seven names from which to choose one for a ninety-day assignment in Germany. A Major May, going to a file, found Clapp's name linked with certain others and recommended investigation. This was then passed on to a Major Morrison, who rather than bother with investigating one unknown person when he had six clear names, cabled Germany that Clapp—who hadn't asked for a job and didn't know he was wanted—was "unemployable," though Morrison knew that term implied suspicion of disloyalty. In public inquiry, Morrison revealed that he, a supposedly responsible officer "evaluating" intelligence reports did not know what names were connected with Clapp's, nor why, nor even that Clapp held the enormously responsible post of head of TVA, by an appointment the Senate confirmed only after public hearings not long before.

This is the foul mess resulting from our toleration of political police in a cold-war hysteria. The evidence and witnesses in the Communist conspiracy case come from this same cess-

pool—and smell of it. Thirteen in number, in the order of their appearance on the stand they are:

Louis Francis Budenz: Renegade, informer, professional anti-Communist witness.

Herbert A. Philbrick: Informer, "planted" in the Communist Party.

Frank S. Meyer: Renegade.

Eugene H. Stewart: Special Agent of the FBI.

Fred Cook: Special Agent of the FBI.

William O'Dell Nowell: Renegade, informer, long-time professional anti-Communist witness and labor spy; given job by government just before trial.

Charles W. Nicodemus: Renegade, informer, rescued from prison by the FBI.

Garfield Herron: Informer, "planted" in the party.

Angela Calomiris: Informer, "planted" in the party.

Thomas Aaron Younglove: Informer, "planted" in the party.

Williams Cummings: Began as labor spy; subsequently "planted" in party.

John Victor Blanc: "Planted"; became active in party only after becoming informer for FBI.

Balmes Hidalgo: Informer "planted" in party; the busybody volunteer-informer type who supplies particularly worthless information for want of understanding on his part.

A case supplied with a roster of rogues no more trustworthy than these, needs help. The government tried to perfume these witnesses with patriotic incense. More than once, during their testimony, the FBI issued statements lauding these informers as worthy citizens who had performed a "patriotic service" by "undercover" spying inside the party. Russell Porter outdid the FBI. While witness Herbert A. Philbrick, for nine years a spy in the Boston area, was under cross-examination that revealed all the little chicaneries inherent in the trade, Porter wrote (*Times*, April 12):

"Wearing a red, white and blue tie and sitting under the Great Seal of the United States with its outstretched wings of the American eagle on the wall of a Federal courtroom, the witness said he joined the Communist Party to inform the FBI of its activities, as a patriotic duty."

That's pretty fancy writing—and those are pretty fancy stage props—but all the purple prose in Christendom won't change the spelling of the word "betray." The spy of high or low degree is a betrayer. Judas betrayed his dear teacher, a leader of a small and intimate band in a persecuted cause. It was an inside job for money, and we hate his name. For material rewards, for cash, for jobs, or for immunities, or for the satisfaction of petty passions, these thirteen heirs of Judas followed in his path. We hate Judases because all that is human in a man rots away from the leprosy of betrayal.

Think what it means to be an informer: you learn how to win the confidence of certain fellow humans; you share their griefs and joys; you take a place in their hearts. Then, when you know them well, as they are in the bosom of their families, in work and play, in anger and compassion, you tell tales of them to men who do not know them in all the roundness of their lives and therefore *could* not truly comprehend the partial facts or fantasies you relate if they wished to. Since your reports are, at best, facts out of context, they are lies; and so, as your employer shows himself impatient for just certain facts which suit his purpose, you find it easy to slip into falsifying completely what is already a lie in its heart. Only in this way can you be a successful informer.

All of the government witnesses are renegades or informers or both. Seven of the thirteen are full-scale inside betrayers of the kind described above. They are presented with the boast that they were "planted" in the Communist Party, by way of giving authority to their testimony. The prosecution even made a point of having them remain active up to the moment of taking the stand, hoping the theatrical coup would conceal the taint of the informer. But when all is said and done, they

are such sorry witnesses to make a "case," that one wonders why the government stooped to use them.

A great many people have asked that question. As a matter of fact, when the government closed its case on May 19 with the weakest of the seven "plants," there was general surprise. Porter says the prosecution "caught the defense by surprise in resting its case at the end of the cross-examination of Balmes Hidalgo Jr.," and I believe that is true but I know it is only a half-truth. Reporters covering the trial, newspapermen outside, lawyers observing it, and others with whom I talked, had agreed that the prosecution's last witness (or some witness before it rested its case) would be "an atom-bomb," as one man expressed it, that is, a witness of stature, offering testimony of a grade far above that characterizing the trial theretofore. They expected a witness capable of understanding Marxist theory and interpreting the line and activity of the defendants. After a mess of small fry, a big fish was expected.

But none appeared, and a little thought will reveal the error in the thinking behind this false expectation. What use would a man of better understanding be to the prosecution? The prosecutor is busy reducing Communism to tales of sabotage and plots to bring the Red Army down through Canada to Detroit. He needs witnesses who will say that Marxist theory means armed forays by cutthroat bands. A higher-grade witness would defeat the prosecutor's purpose. He would be expected to discuss Marxist theory on the level that it has been discussed and interpreted by many non-Marxist and anti-Marxist—but sober—writers for the past century. That was in less hysterical times, but the shelves of public libraries still contain many such works which treat serious ideas in a serious way and have nothing in common with the claptrap presented by Louis Budenz and twelve other informers in Judge Medina's courtroom. No, assuredly, Prosecutor McGohey could not have used witnesses other than the kind he used.

The prosecution needed informers, but one wonders why the FBI supplied them. It is a prime principle of police work

to protect your informers. They may lead you to evidence or they may cheat you by manufacturing it, but they must not be betrayed; they must not be put on the witness stand where they lose further usefulness and cast a cloud over your case. If the government, and the FBI in particular, here violated that principle, it is precisely because these informers are of such low grade that no real sacrifice was entailed. The thirteen witnesses are considered suitable to the kind of reckless and irresponsible case now prosecuted, but they are not considered as having any real value to the FBI. They know nothing that cannot be read in Communist publications available on the newsstands. They do not understand even that much. They are, in short, expendables.

Even knowing the character of Louis Budenz and his twelve disciples, it is hard to read the record and believe such testimony as theirs was given—and permitted—in the year 1949. It is hard to admit that a Federal Court tolerated the concocted, self-contradictory web of inventions called "proof" in this case. It can be understood only by bearing in mind the hysteria of the times, the actual terror of dangerous thoughts that prevailed in the fifth year of the cold war. On June 12, 1949, when the University of California adopted a requirement that faculty members take an anti-Communist oath, Dr. George Pettitt, assistant to the university's president, offered a revealing explanation:

"We don't like the idea of oaths—nobody does. But in the face of the cold-war hysteria we are now experiencing, something had to be done."

Dr. Pettitt neglected only to say that the hysteria was not a spontaneous thing but was part of a carefully cultivated mood. With respect to the Communist trial, there is documentary evidence of a meaner and uglier purpose within the general framework of the cold war. Anti-Communism had become a football of domestic politics. This is what happened:

In the summer of 1948, the Republicans and anti-Administration Southern Democrats grabbed the anti-Communist

ball. The "spy" hearings not only fed the war-on-Russia hysteria and the anti-Communist fever, but also turned anti-Communism into a partisan weapon for use against the Democratic Party. The hearings became an attack on the Administration for alleged laxity in hounding Communists and Communist sympathizers. (Carried one semantic step farther by local witch-hunters, the formula later reached its broadest in California where the Tenney Committee issued blacklists of persons and organizations not even charged with kind feelings for Communism, but guilty of "appeasing" the Communists in some respect! He that is not with me is against me: failure to turn informer and redbaiter, to hunt with the pack, means that you must join the hunted!) The political advisers of President Truman understood this very well. The Administration aided and abetted the hysteria-mongers, but it knew that was not enough; it must also capture the political credit for "saving the country from Communism."

The strategy adopted called for the outlawing of the Communist Party and the jailing of Communists all over the country, by methods just short of open illegality or storm-trooping. The first move was the indictment of the Communist leaders; that was carried out on July 20, just in time to affect the founding convention of the Progressive Party two days later. The main drive, however, was saved for the last weeks of the campaign. Insiders tipped off reporters in September to the coming events. In a syndicated column from Washington on September 16, Hearst writer George Dixon told the story under the heading, "Stealing the Show from the GOP." It ran as follows:

"The Democrats, through Attorney General Tom Clark, plan a sensational attempt to take the anti-Communist play away from the Republicans in the next few weeks. The Department will seek indictments against well-known Communists in key cities all over the country. The Department will go before Grand Juries with evidence gathered by its own agents. . . . Clark is sending many cases in the FBI files to Grand Juries all over the country."

A month later, with only weeks to ballot-day, the drive opened wide. An advance announcement of its Constitution-evading purpose, appeared in an article on October 21 by Scripps-Howard syndicated writer, Tony Smith. It was headed "Nationwide Drive on Reds is Given Pre-Election Timing."

"A nationwide crackdown on the 'open' Communist Party leadership began gathering steam today . . . in at least five American cities. Listed are New York, Philadelphia, Cleveland, Denver and Los Angeles. . . . One expert for the House un-American Activities Committee concedes that the proceedings in Denver and Cleveland indicate that federal officials finally have found a way to jail any Communist official they regard as a security danger. He explained that the trick is to subpoena the Communist, ask him questions he can't answer, and then cite him for contempt when he refuses."

Well, that's it! A "trick" to jail Communists! In a Justice Department bulletin of June 15, 1949, later expanded into an article by Tom Clark in *Look* magazine (already cited), the Administration boasts that it has carried out this plan. It has hounded aliens who could not be deported, out of the country; it has loyalty-investigated men out of their jobs; it has put thirty-four "alleged Communists"—the term is Clark's—in jail on contempt charges in Washington, twenty-five more in Los Angeles and seven in Denver; it has used passport violations and perjury charges where these "have been the only cases provable"; and it has brought eleven "topflight Communists to trial in New York." All of this in the Department's avowed effort "to stamp out Communism," whether or not Communist activity is within the Constitution! This latter problem is on Clark's mind, for he asks that laws be passed to give the drive more leeway, and he proposes sanctions against lawyers who defend the civil rights of Communists. In Clark's language, the right to practice should be denied not only to Communists, but to "lawyers who are not probably card-carrying Communists, but who act like Commu-

nists and carry out Communist missions in offensives against the dignity and order of our courts."

This is the man who, when that avowal appeared, had been elevated to the bench of the Supreme Court of the United States by the President and Senate of the United States! Is it any wonder that half the county prosecutors and Justices of the Peace of these United States now think they have been empowered to use any "trick" to jail any person they choose to regard as a "security danger"?

Only in this climate of moral degradation is it possible to comprehend the testimony of Prosecutor McGohey's thirteen expendables. The whole sorry business is more deserving of contempt than of indignation. The humorist, Frank Sullivan, in a piece in the *New Yorker* magazine of July 2, 1949, poured the withering acid of ridicule on it. The record would not be complete without quotation from Sullivan's article, called: *These Are the Trials That Try Men's Souls.*

"It is not as difficult as it first seems," he gravely assures us, "to get the judges, the defendants, the complainants, the attorneys, and the charges in these various causes célèbres straightened out in one's mind if one devotes a portion of each day—say, half—to a careful scrutiny of the newspapers."

He then proceeds to scramble all the cases, casts and facts beyond disentanglement:

"To begin with, Judge Medina is the Federal magistrate who is presiding over the trial of the eleven Communists accused of advocating the overthrow of the government by force. We all know Judge Medina by this time, as his trial is now in its twenty-third year, so there is little likelihood of our confusing him with Judge Hickenlooper, who is prosecuting David E. Lilienthal for allowing Gerald Eisler to escape on the U-235."

After more delicious confusion, in which Senator Wherry met Judith Coplon in upper Manhattan and "snatched her purse which was full of microfilm showing Hollywood actors and actresses engaged in Communist activities," Sullivan

gets down to the political motives behind the trials. And here, for all the innocent merriment, there are teeth in his smiles.

"Now, what is behind this whole series of trials?" he asks. "It is important for us to understand that. Well, some think that it is all because Lloyd Paul Stryker wants to get control of the atomic bomb out of the hands of Judith Coplon, in order to embarrass the Democrats in the Congressional elections a year from next fall. How? How can you embarrass a Democrat? Many thinking people are asking themselves that question in these troubled times."

Yes, how can you embarrass a Democrat? Or a Republican? Or a bipartisan regime so blind-drunk with the wine of anti-Communism that it can put the scales of justice in the hands of a Tom Clark? Or a ruling class so frightened that it tries to legalize many previous lawless acts of "war on Communism" by convicting eleven Communist leaders of secret conspiracy on the patently false testimony of thirteen degenerate informers?

Chapter 13

THE EXPENDABLES

What scabrous souls the informer's trade produces! From the witness stand, William Cummings related how he had recruited an in-law and two cousins for the Communist Party —only to turn their names over to the FBI. But no sooner do you rate one witness the worst of the thirteen, than another witness turns up who proves you have not hit bottom. John Victor Blanc confessed that he had similarly recruited a brother-in-law, but this time without the knowledge of the relative involved! Blanc simply forged his brother-in-law's signature to an application blank, and then collected from the FBI for "expenses" incurred for this and other "patriotic" services rendered.

From March 23 through May 19, none but renegades and informers took the stand, with the exception of two Special Agents of the FBI. For two months, they unwittingly bared their souls on direct examination, or reluctantly confessed their sins under cross-examination. The accidental reader of the record from page 1338, where the testimony of Louis Budenz begins, through page 6025 where the thirteenth and last government witness ends his testimony, will find a revolting document revealing to him an unsuspected underworld below the last layer of Hell. All thirteen witnesses, he will find, practiced betrayal as a profession over a period of years. All received money for it, in the form of monthly allowances, expenses, jobs, or other opportunities for gain.

All thirteen made it their business not just to be present at Communist meetings but to be bosom buddies of their fellow-Communists. At social gatherings and in private homes, many of them generously took pictures of their comrades—and sent copies to the FBI. They worked to win confidence, to have entré to homes and knowledge of their associates' personal affairs; they went out with them socially, played with their children, were part of their lives—all to gain positions which gave them access to membership lists and permitted them to influence policy-making. Then they were able to include in their reports not only the names they had gathered, but copies of Communist leaflets which they themselves had written, and descriptions of Communist acts which they themselves had performed.

They spied on trade unions, womens' groups, youth organizations and non-Communist minority political parties, too. The witness Angela Calomiris joined an AFL union and a CIO union, the American Labor Party, the Progressive Party, the International Workers Order, the Congress of American Women, Greeks for Democratic Action, the Joint Anti-Fascist Committee, "and at least five others," she remembered complacently. She sent reports to the FBI on all of them, and what the FBI wants, above everything, is *names.* The witness Herbert Philbrick, who boasted that he had been an informer for the FBI the full nine years of his membership in the Communist Party, was also a joiner. He joined the Progressive Party, the Civil Rights Congress, the CIO United Office and Professional Workers, and American Youth for Democracy. When first questioned about his work, he acknowledged reporting to the FBI on all of them. After overnight coaching, he qualified this: his reports were only on "Communist activities" in these other organizations, he said. But ordinary working people don't believe that labor spies and political police agents are or can be so discriminating. When John V. Blanc of Cleveland gave similar testimony in the Communist trial, his local Council of the CIO United Auto Workers, though many

of its members are very actively anti-Communist, voted *unanimously* to drop Blanc from Council membership.

The testimony of the thirteen not only reveals them as low fellows, but as low-quality craftsmen in their chosen trade of informer. They were men and women capable of gathering names, of acting as *agents provocateurs,* but nothing more. Their task of winning posts inside the Communist Party required little ability, for, as their own evidence shows, American Communists were more trusting than the politically wiser workers of the rest of the world. They were not so familiar with the police agent "plant" as Communists elsewhere are; moreover, they were constantly engaged in trying to compel their persecutors to give them, in practice, the legality which Communists enjoyed—and still enjoy—in theory only. They practiced—so the testimony of these very witnesses shows—barely enough "security," or not enough, to protect some of their members from loss of private jobs to which, law or no law, they would be instantly exposed if they became known as Communists. When the witnesses describe their rise within the Communist Party, therefore, the stories are of easy success in gaining control of membership lists and funds. But their testimony simultaneously reveals that they never understood, never tried to understand, what the subjects of their espionage were doing, saying and studying during those many long years they wrote reports about them.

Here are spies not only sent to work among the Communists, but brought to the witness stand to testify on how these Communists understood and taught the theory of Communism or scientific Socialism. But watch them on the stand! They do not testify from knowledge; they testify from recent re-reading of the reports they sent to the FBI over the years, and from recent coaching on their testimony by the FBI. The witness Blanc will do as an example. He took the stand briefly on May 13, continued all day May 16 and concluded only after another full day, May 17. Under cross-examination, he acknowledged that he had never made the least attempt to

understand what his comrades were talking about; even for the purpose of pretending to be a Communist, he used another device. Yet after each meeting he went home and wrote, from memory, a report on the evening's events and discussion, just as if he knew what it had all been about. Almost at the end of the examination, he was asked a question about *Das Kapital,* or *Capital,* the major work of Karl Marx, and it would have been no surprise to learn that he had never opened it. But it turned out that up to the moment he was asked that question, he had never heard of the work at all! And this man employed as a spy inside the Communist Party from 1944 to 1949, did his work to the satisfaction of the FBI without reading American Communist publications, either. Asked about an article in *Political Affairs,* the monthly theoretical magazine of the Communist Party of the United States, Blanc said: "I never read a *Political Affairs* in my life."

Ignorance was no handicap to the informer-witnesses. Employed as a betrayer, Blanc won confidence by trickery, falsification and by betraying even his employer, the FBI. Fake recruiting was his specialty; his success in recruiting, achieved by inventing recruits, established his credit. On direct examination, he describes how "I formed my own club in the Park Drop Forge Company" plant where he was employed. There had been a strike in the plant from January to April 1947. A Communist official had suggested that when the workers returned to the job, the best and most militant of them should be invited to join the party, and they should be members of a club or unit in the plant itself. The record says:

(From the record)

BLANC: I spoke to several workers who had been closely contacted [connected] with a grievance I had taken up in front of management for them and asked them as a favor to me to join the Communist Party.

QUESTION: Did they join?

BLANC: Well, after I told them further that it wouldn't take up much of their time and it wouldn't cost them anything, a few of them joined.

QUESTION: Did they pay dues?

BLANC: They did not.

QUESTION: Who paid their dues?

BLANC: I paid their dues.

QUESTION: Did they subscribe to the *Worker* or the *Daily Worker?*

BLANC: The subscription to the *Worker* was also paid for by me.

* * *

Witnesses like Blanc usually tried to conceal the ugliness of this kind of work, the work of the police *provocateur,* by denying that they turned over to the FBI the names of their own recruits. But subsequent questions trip them. In acknowledging that they report all meetings fully, they admit that on occasion they sent even the names of their own recruits to the FBI. This recruiting story has another interesting aspect. It shows that the informer gave a very different picture of the Communist Party to his proposed recruit, than he now draws in court. In fact, the party as he presented it to his recruit, is the party as the defendants now describe it! He won the confidence of the men he sought to recruit by defending their interests in ordinary daily quarrels with the plant management. And it is this militancy in unmelodramatic activity, incidentally, that caused the Communists to recruit Blanc in the first place and it is this militancy which maintains his credit later.

Still another aspect of the story illustrates the meaning of the word *"provocateur."* Blanc asked his fellow-workers to join the Communist Party as a personal favor. He is in the party to obtain evidence that will enable the government to prosecute the Communists, but he gets other men to put themselves in peril of prosecution as a personal favor to him and without suggesting that the Communist Party does unlawful

things. And now he mounts the witness stand to swear that it does. If he is believed, not only these defendants but Blanc's recruits become subject to imprisonment. That is what is meant by police agent, or *agent provocateur.*

In testifying against the defendants, Blanc tells tales of how this Communist or that Communist talked in unmistakably violent terms of the Socialist Revolution. He is very glib, and on cross-examination he reveals why: he spent a solid week with FBI Agent David Weible, in December 1948, preparing his testimony. This came out when, in questions about a report he made in 1945, he said he could recall the details because he saw the report not long ago.

(From the record)

BLANC: They were given to me to review.

QUESTION: "They," you mean your reports?

BLANC: That is right.

QUESTION: All of them?

BLANC: No, sir.

QUESTION: How many?

BLANC: Only the reports that I would be able to testify on this trial.

* * *

It developed that there were "forty or fifty" of these. After a week of coaching on his testimony, in other words after he had definitely been given a role in the prosecution cast, he continued to recruit people who would thereby become subject to criminal action if the trial should end in conviction! He recruited only "imaginary people," he says, in March and April 1949, but he "may have" recruited some real people between December and March, he admitted. I find this on the sickening side, but when Blanc told how he had "recruited" his brother-in-law without telling the latter, Judge Medina—who so thoroughly disapproved of laughter by the defendants—himself laughed aloud. It would be interesting to see

how the thirty-five to fifty persons recruited by Blanc from 1945 to 1948, look at this joke.

All, *all* the prosecution witnesses come from this secret, slimy swamp that breeds the reptile tribe, the professional betrayer. Is it not ironic that the prosecution should have called on a dozen secret betrayers to prove that the Communists are conspirators secretly plotting to betray their country? That is precisely what they are supposed to prove. Is it any wonder that the case is one of the shabbiest in the history of political heresy trials or witch-hunts in the United States?

One of the features of the "proof," is that it is rarely about the defendants. The most sensational things the seven FBI "plants" have to tell, were said or done by other persons than the defendants (just as in the IWW trials). The witnesses often knew or met one or more of the defendants, heard them speak at meetings or lecture in schools. But when something really "hot" occurred, when some Communist preached wild force and violence, it turns out that the witnesses are not quoting a defendant but somebody else.

The witness Blanc came down from the stand several times to "finger" various defendants. He had been recruited into the party in 1944 by defendant Gus Hall. He had heard defendant John Williamson speak in Ohio in July 1945. He had attended a meeting early in 1946 where defendants Jack Stachel and Carl Winter were present and had things to say. He had attended a school in the summer of 1946 where defendant Gil Green delivered one lecture. But having "fingered" these defendants after the fashion of the gunman's cowardly accomplice, he went on to relate damaging statements made—by other people. He swears that at a school he attended, an Ohio Communist official, Hymer Lumers, "also known as Lewis," taught that you couldn't vote the Communist Party into office; you'd have to overthrow capitalism to get Socialism, and "when that time came, we could always rely on the Soviet Union as our ally."

This is the pattern of all the prosecution testimony. We

have already seen how Nicodemus performed this same chore of linking Communist plans for violent revolution with "invasion" of the United States by the Red Army. In his case, too, it was not a defendant who said these things. So with all the other witnesses. The witness Philbrick relates how a group to which he belonged met at the homes of its members and whoever was host or hostess for the evening, acted as chairman. Once it came the turn of a girl named Martha, and Martha (Philbrick says he took pains to find out the last names of all these members, but here it sounds more conspiratorial just to say "Martha"), said: "We must arm the workers for the struggle against the capitalists." This is admitted as evidence against the defendants! How roundabout are the roads to Rome!

To get this shoddy material into the fabric of the case, it was necessary, as usual, to avoid facing defense objections. This was done in the customary way: Judge Medina gave a display of weary tolerance of those argumentative lawyers, scolded them for arguing—and ignored the substance of their argument.

(From the record)

GLADSTEIN: Your Honor, may I state the grounds of objection?

MEDINA: I rather suspect it is what I have already heard but you may do so.

GLADSTEIN: Your Honor, I object because this calls for statements not made by a defendant but statements supposed to have been made by some other person, the theory of its being offered against the defendants being that the defendant happened to be in the same room—same room in a public meeting.

MEDINA: At a Communist meeting.

GLADSTEIN: Any meeting, and didn't get up afterwards and say anything by way of disagreement or otherwise, the theory is it is admissible against the defendant.

MEDINA: That is what you say the theory is.

GLADSTEIN: May I know then the theory upon which it is received?

MEDINA: You see, it is the same old story. You get up to state grounds of an objection and argue, argue, argue. You ask me questions and then you begin to ask Mr. Gordon, and then we forget all about what we are doing and we have to start all over again.

GLADSTEIN: No, my point is that it converts the charge from one of supposed advocacy by a defendant into something that somebody else said.

MEDINA: It is the old story. You want to get up and argue to the jury, and perhaps others, when all you do is object and you continually insist that you are stating grounds of an objection when all you are doing is just making a little speech which you should reserve for your summation. The witness may answer the question.

* * *

The witness Calomiris attended a school where defendant Gil Green once spoke, but her testimony "convicts" not Green but lecturer Francis Franklin of criminal advocacy. He told them, she said, that "it would be necessary to violently overthrow the existing government." The same things happened in St. Louis, according to witness Thomas Younglove. At a class organized by his party club in the winter of 1945-1946, a St. Louis lawyer named Douglas MacLeod allegedly "said the ballot-box was not the answer to bring about Socialism but it would have to come about by violent action." Now no one knows who MacLeod is, but everybody knows Joseph Stalin, so Younglove brings Stalin to St. Louis by remote control. At the concluding session of a six-week course in October 1946, he says, Ralph J. Shaw, Missouri Chairman of the Party, reported he had just come from a meeting of the National Committee. Shaw said, according to Younglove, that a "personal representative" of Premier Stalin had addressed the National Committee meeting, saying that war was near and might come

at almost any time and if it did "we" must be prepared to go underground. Shaw's own comment, according to Younglove, was that "if war does come, we, the party workers, will do all we can to sabotage the war effort."

The more contemptible the witness (if this is not splitting hairs) the more far-fetched the stories he consents to tell. William Cummings, who recruited his in-law Nathan Thomas, and his cousins, Ed and Ellen Payson, in order to betray them to the FBI, swears that at a meeting in Toledo in 1945, two Communist officials even set an approximate date for the coming American revolution! Mrs. Adeline Kohl and Paul Prosser, he says, agreed that a first estimate of ten years (1955) was too conservative! "Due to world conditions," including Communist work in the United States, "it was much closer." And to add some "color" to his story he relates that during a two-week course he took in the winter of 1945-1946, during which defendants John Williamson and Gilbert Green lectured, somebody else—someone who is not a defendant—warned that the streets of America "would run red with blood" as they had in Russia in 1917.

Patience, reader. One more of these proud "plants" of the FBI and we shall go on to other matters. The seventh "plant" and last prosecution witness, Balmes Hidalgo, really touches bottom. His morals are on a par with the others but due to his superior ignorance and incomprehension, he succeeds in burlesquing their performances. In his club, the Tom Paine Club in New York City, in the spring of 1947, he said, "a girl named Betty" stated that American Communists know violent revolution is the only way but "she told them if anybody ever accuses us of this, our answer is, 'No. We just predict it.' " That's the beauty of testimony like this: try and prove that no girl named Betty ever said that!

When you are all through with the trash these witnesses drag into the Federal Court of the Southern District of New York in the name of "evidence," you have nothing that an honest prosecutor or newspaperman could touch with a ten-foot

pole. Yet the prosecution relied on this stuff and this stuff only, and the big commercial newspapers went for it eagerly.

If the testimony of the prosecution witnesses was far removed from the persons of the defendants, it was also remote, in point of time, from the period of the indictment. Of the testimony of William Nowell, for example, the *Times* (April 19) could say: "The witness extended the pattern of such activities, previously traced between 1935 and the present, back to 1929." The alleged activities took place "as much as twenty years ago."

If they testify only about other people and other times, of what use are these moral lepers to the prosecution? They cannot be there as character witnesses, having none themselves. Nowell, who was expelled from the Communist Party some thirteen years ago, has since been repeatedly identified by non-Communist workers, on various jobs, as a labor spy. In connection with a job he had in 1944 at the Ford works in Detroit, he said the workers dropped "things out of cranes on me, and pushed things off stockpiles on me." To tell the truth, they forced the company to fire him, but he solemnly says that he was fired because of collusion between the Communists and the violently anti-Communist (and anti-labor) Ford Motor Company!

No, you can't deodorize these witnesses. It is certainly not for their fine scent that the prosecution chose them. If we want to understand what they were chosen for, we must face the problem as the prosecutor saw it. His job is to convince the jury that Communists preach force and violence, but he has no evidence that the defendants, during the period of the indictment, taught or advocated anything that will support his cloak-and-dagger case. He knows that the testimony of his several informers as to what other Communists said and did in other times, will not permit conviction of these defendants. How then shall he persuade the jury to silence these men and outlaw their books? His answer is—secrecy!

Chapter 14

THE USES OF PERVERSITY

Secrecy! When the High Priest made up his mind to throw Jesus to the Roman wolves as a pre-Munich appeasement sacrifice, he invoked the same charge of dark and secret ways. As XVIII Johns, 19-23 relates:

"Jesus answered him, I spake openly to the world; I ever taught in the synagogue, and in the temple, whither the Jews always resort; and in secret have I said nothing.

"Why askest thou me? ask them which heard me, what I have said unto them: behold, they know what I said.

"And when he had thus spoken, one of the officers which stood by struck Jesus with the palm of his hand, saying, Answerest thou the High Priest so?

"Jesus answered him, if I have spoken evil, bear witness of evil; but if well, why smitest thou me?"

The High Priests of anti-Communism are no better than the earliest guardians of orthodoxy. They brought on not one but thirteen Judases to create the impression that the Communists taught in secrecy. It was not enough that witness after witness should relate how Joe Doakes told him Marxism means force and violence. It was necessary to describe Communists as cunning conspirators operating in an atmosphere of sinister secrecy. More important than Joe Doakes' alleged words of incitement, is the irrelevant, manufactured or distorted detail that the witness smuggles into his testimony. It is the scenery of secrecy that counts, not the plot of the play.

Louis Budenz, for instance, in describing meetings of the National Committee of the Communist Party, was not required

to relate incidents and leave it to the jury to decide whether they showed something secret and conspiratorial. He was permitted to *characterize* the meetings, to call them "secretive or semi-secretive." When the defense objected, the Court did not order this stricken, but turned to Budenz and asked what he meant; did he mean admission was by card only? Budenz gave an evasive answer, but Judge Medina blandly remarked that perhaps the witness meant "extra-secretive." Upon protest by the defense, he withdrew this remark but in a manner that indicated he personally attached great importance to Budenz' testimony: "Just pay attention to what the witness said happened," he instructed the jury.

Subsequent witnesses follow the same pattern. The meetings they attended were "secret." The decisions taken by the Communists, though openly published for proclaimed purposes, become evidence of secret preparation for violent revolution. Witness Philbrick and many other witnesses related how the Communist Party fixed tasks, usually that of increasing their membership in the main industries of a given state or locality, as key tasks or "concentration" tasks. By choosing words to get the "secrecy" emphasis desired, Philbrick turns this into a tale of how they "colonized" a General Electric plant at Lynn, where jet airplane-engines are manufactured. His own testimony shows that there were meetings, discussions, printed documents, calling for energetic efforts to win adherents among the workers in *every* industry represented in Massachusetts. But a touch of secrecy, coupled with a reference to jet-planes, will convert Communist plans, openly published, into a secret decision with sinister ends. "Concentration" thereby becomes a code-word meaning preparation for ultimate invasion of America by the Red Army.

The remoteness of the testimony from the charges in the indictment, the shallowness of the proof, must be buried in mystery. The party secretly taught violence and publicly preached peace and democracy, Philbrick testified. He himself, he says, helped prepare material for both public and secret purposes.

Copies of leaflets and other material he prepared were sent to the FBI with his reports, and these copies are now submitted in evidence. Not one document advocates force and violence! How is this? Philbrick explains that it is because material for public consumption did not contain advocacy of force and violence. But where, then, is the material you yourself prepared for secret use? The witness has no answer. The prosecution has no answer. The Court has no answer.

There can be no answer for there is no such material. The testimony of this very witness contradicts the testimony about "secret material." The story of "Aesopian language" contradicts it. In supporting Budenz' fable, Philbrick shows that the prosecution is not relying on things said and done in secret. It is relying on interpretation of openly published documents of the Communist Party. Elaborating the Budenz story, Philbrick said that Communists taught violence by use of semantic devices, that is, by their special use of words. They used words containing a hidden meaning recognized only by Communists, he said. With such devices, he testified, the party could prepare the minds of its members for war while calling for "peace." They could rally members to support of "totalitarian" Russia by calling them to defend "democracy." They could arouse them against the United States by attacking "Fascism" and "Imperialism," he said. In all seriousness, this witness and other witnesses testified that the Communists have such a code. But in all seriousness, if one may speak seriously of nonsense, the existence of such a code would make unnecessary any secret documents. If there is a code, the "secret material" is an invention; if the secret material exists, the "code" is pure perjury. In truth, both are false. The secret documents and the code are alike inventions that are worthy only of these corrupt spies.

Angela Calomiris, like all the other "plants," attended "secret" schools and takes up much time with testimony that Communists use only first names, and that there are no recording secretaries at meetings and that no minutes were

taken after the 1945 reorganization. Yet one of the "secret" schools she attended was held in the building at 35 East 12th Street that housed the national state and county offices of the party, as well as the *Daily Worker*. Surely it was always under observation and always known to be under observation. And her diploma from this school, the witness says, she sent to the FBI to be photographed. Now what kind of "secret" school gives diplomas?

William Cummings says he attended a "secret" school held in rooms over "the Russian cooperative restaurant." One touch of borscht should be enough to make this school suspect. But is it not a grim joke that this witness to the horrendous secrecy of the Communist Party was a secret police agent who had first entered FBI service on a labor espionage assignment? And he testifies that when the secret school was over, he secretly reported to the FBI! Russell Porter relates, without a trace of irony: "He said he always met the agents at night."

Secrecy, secrecy, secrecy! That's the prosecution's "conspiracy" case! Judge Medina frankly told the defendants that he attached as much importance to this matter as the prosecution did. "He stressed the importance of the secrecy attributed to Communist activities in the testimony," Porter noted in his account of argument after the prosecution rested its case (*Times*, May 21). In fact, the role of secrecy in the prosecution case was fully revealed in the course of the argument. The defense had moved to dismiss the indictments for want of valid evidence; the argument turned on a legal point, one easily understood by a layman. It was a question of the Supreme Court doctrine that there must be a "clear and present danger" to the country before the government may attempt to curb speech.

Justice Oliver Wendell Holmes, Jr. formulated the doctrine in 1919, when he was virtually alone in retaining his senses at a time of German spy-scares and witch-hunts for "agents of Russian Bolshevism." Holmes said:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

In 1941, the Supreme Court remarked, in an opinion on an appeal by the noted labor leader, Harry Bridges, that "the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

In other words, the fact that the teaching of Marxism may, by some process, prove the decisive element in some future revolution at an unpredictable date, is not enough to permit the government to outlaw the teaching of Marxism today. There is no "clear and present danger." Holmes' dissenting opinion of 1919 became the majority opinion, the view of the Supreme Court, when the hysteria following World War I died away. In 1943 the Court could say:

"It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish."

The prosecution seized on the word "action." Many, many times during the trial, it brought up the agreed fact that Communists teach Marxism as a "guide to action." But what of that? What idea was ever worth teaching except with the design to put it in practice? The Supreme Court said in 1945:

"The First Amendment is a charter for government, not [a charter for] an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."

Indeed, the Court had elaborated this point in 1940, saying: "Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on

peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evil arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion."

Now the prosecution had no testimony to overcome this doctrine, no evidence that would show a very "proximate" danger or a very "imminent" evil. If, as its witnesses show, the Communists taught the same doctrine in 1929 that they teach today, and this teaching has not yet produced an attempted overthrow of the United States Government, where is the fire today? The prosecution was reduced to the argument that times have changed, the world has changed, and that in view of the cold war the "clear and present danger" doctrine has become a luxury we can no longer afford. The prosecutor made that point even before the trial. In a brief or memorandum in October 1948, opposing the defense motion to quash the indictment, McGohey said:

"Assuming, *arguendo,* that the 'clear and present danger' doctrine is applicable to this prosecution . . . we submit that it is impossible to conclude that the allegations of these indictments . . . *viewed in the context of world events,* do not charge a clear and present danger to the Government of the United States."

"The context of world events" . . . that's another way of spelling "cold war." And now, when the government has rested its case, and the defense again raises the "clear and present danger" doctrine in a motion to dismiss, Judge Medina and Prosecutor McGohey alike reveal that they just don't like the doctrine. Here is the substance of days of argument: *(From the record)*

MEDINA: So the clear and present danger you are talking about is the immediate overthrow of the government?

ISSERMAN: That is correct.

MEDINA: Well, that being so, it seems to me it reduces itself to an absurdity, because on that theory you couldn't punish anybody for such a conspiracy unless the government was just about to be overthrown, and then it would be too late. Isn't that so?

ISSERMAN: That is throwing the "clear and present danger" doctrine out of the window.

* * *

McGohey picked up the ball and ran through the opening made by the Court. Justice Holmes, he said, "was talking from the background of a life and an experience where there was the freest possible discussion, in the town meetings of New England" and the like. "He was not talking about the kind of propaganda speakeasy that we heard about in this case, where persons went to school under assumed names, coming through a doctor's or dentist's office into rooms some place else. This is not the kind of freedom of speech Holmes said could be protected. In no event did Holmes in any of his decisions say that where you have an organized group, nationwide with a system such as has been shown in this case, that kind of teaching cannot be reached."

All that McGohey is saying, is that he and the men who initiated this case don't like the Communist Party and don't think it should enjoy the protection of the Constitution under the "clear and present danger" doctrine. That determines the testimony of the thirteen renegade-informers placed on the witness stand by the government: they must describe the teaching of Marxist-Leninist principles in the United States in terms of a "propaganda speakeasy." They must invest Communist schools with secrecy and make a dark mystery of the very openness and scope of Marxist work in the world today. They must do that to get McGohey around the barrier of the Supreme Court.

Without some new device, McGohey has no case. The

Supreme Court has said that you can't stop people from advocating doctrines just because you don't like them and you happen to be in power. But McGohey says this is different. This is dangerous. This is a far-reaching organization in a cold-war world. And for want of evidence that the defendants are spies, Soviet agents, traitors (as the headlines have it), for want for credible evidence that the Communist Party is indeed engaged in a plot to overthrow the United States Government with the aid of the Red Army, he must substitute mystery, secrecy, dark innuendo. What we do not know, it is implied, we cannot prove only because these men are so dangerously conspiratorial, so secretive in their work. If we wait for evidence, it will be too late.

Once again we must call on *Alice in Wonderland* for a parallel. If you remember, the trial of the Knave of Hearts was about to break up when the White Rabbit found a piece of paper on which someone had written "a set of verses."

"Are they in the prisoner's handwriting?" a juror asked.

"No, they're not," said the White Rabbit, "and that's the queerest thing about it."

"He must have imitated someone else's hand," said the King.

"Please, your Majesty," said the Knave, "I didn't write it, and they can't prove that I did: there's no name signed at the end."

"If you didn't sign it," said the King, "that only makes the matter worse. You *must* have meant some mischief, or else you'd have signed your name like an honest man."

Communist "secrecy" was similarly established. The absence of evidence of guilt proved it. McGohey had already outlined that approach to the case in his opening argument. He would prove, he said, that everything the Communists did had a secret purpose. Communist clubs, or branches, from World War I to the summer of 1948, were not political clubs or educational societies, but "classes for the indoctrination of their members with the theory and practice of Marxist-Leninist

principles for the overthrow of the United States Government." Of course all passages in Communist documents expressly forbidding such an approach to Marxism, are there for "legal purposes" only; they are "mere talk," they are "empty words." In this context, the fact that Communists conducted schools and publications becomes evidence that they secretly taught force and violence. But *what* they taught in the schools becomes irrelevant!

Witness Garfield Herron testified that he attended a "secret" leadership school in Chicago. But when the defense sought to cross-examine him in such a way as to show that the teachers in this "secret" school taught exactly the theory contained in the published documents already in the record, Judge Medina barred the questions. No, he said, that would only lead to "trying the war in Spain, Jim Crow, whether trade unionism is a good thing or a bad thing, how about wage raises, how about all the things that are done to the Negroes in the South, and of course the whole trial will get off on something that is not an issue."

Secrecy! There is nothing more cynical about this case than the fact that the prosecution and the FBI chose to use spies to prove the secret, conspiratorial character of the Communist Party. For where do informers come from? What do you know about the stoolpigeon system of ordinary police practice which gives rise to the labor spy and the political informer? You probably know very little, for it is not publicized by the forces of "law and order." It is an ugly, secret, shameful thing and until you have become acquainted with it, you cannot feel the full horror of this terrible trial.

Book Four: Force and Violence

"The poor have no laws. The laws are made by the rich, and, of course, for the rich."—*Address by the Association of Working People of New Castle County, Delaware, October 1829.*

Chapter 15

PROSTITUTES AND PIGEONS

Meet Chile Acuna. Many an innocent person did meet him—and wound up in prison on "framed" charges. Chile Acuna was a stoolpigeon—the word is his—for the New York City Vice Squad. His career ended (so far as I know) when he was forced to tell his whole hideous story on the witness stand during the Seabury Inquiry. He counted 150 prostitution cases on which he "worked," and acknowledged that forty of them were "frameups."

Acuna described how he entrapped prostitutes and "framed" innocent women. The officers he worked with, would wait near the apartment Acuna was to enter; after ten or fifteen minutes they would break in. Now Acuna would, in his own words, "play the comedy" regularly performed on these occasions, a performance intended to conceal his connection with the police. He would be taken into the next room where he at first was heard to deny any wrongdoing and then, after he was "beaten" into confession (the officers

slapped the wall hard and he began to groan and weep), he would implicate the women. Then he would leave—it was an "escape" in the comedy—while the victims were placed under arrest. If he were alone, he said, he would go to the station-house and wait for his police confederates—and for the $5 to $10 per person (some of the arrests were mass arrests) which brought his earnings up to $150 a week.

Acuna worked for hire, but during the Communist trial when attorney George Crockett tried to find out how much informer William Cummings was promised for his work as a stoolpigeon by the FBI official who hired him, Medina turned that to ridicule. The Judge asked the witness: "He didn't say, 'Now, you stoolpigeon, you're going to get so much, did he?' " But observe, in the next lines, that Acuna unhesitatingly refers to himself as a "stool." Stoolpigeons are not as dainty as Medina pretends.

"If there was another stool with me," Acuna testified, speaking of his "escape" following arrest, "he would go to the telephone and call up the bondsman or lawyer that was his favorite and notify them of the arrest that had been made just now so that in many cases when the officers arrived with the people that had been arrested at the station-house, the bondsman was there already waiting."

The waiting victims, including a dancing teacher, a physiotherapist, physicians' nurses and others who had committed no offense whatsoever, would be turned over to the gentle care of the shyster and bondsman. The whole sequence is so common that Ernest Jerome Hopkins sums it up in one provocative paragraph of his *Our Lawless Police*:

"Imagine the attitude toward the law of an individual who has gone through the whole series of experiences: he was arrested falsely on lying stoolpigeon information; he was physically maltreated upon and after arrest; he was approached by a shyster lawyer, who has obviously been 'tipped off' by some policeman or jailer, and told that a payment to 'square' the judge and the arresting policeman would effect his re-

lease; he has raised that money by hook or crook, and has been dismissed or discharged in the end, though tagged with a 'police record.' Even the rightful dismissal, under such circumstances, appears to the victim a plain act of crookedness."

This, then, is the stoolpigeon system. It consists not just of the stoolpigeon and his job, but the whole police process. And that process, like the pigeon himself, is rooted in the corruption surrounding organized vice. The Wickersham Commission found that the stoolpigeon system is worse here than in other countries, and that its character is determined by police exploitation of organized vice. Specifically, our laws on prostitution, gambling, drug peddling and the like—the sumptuary laws—start the process. The stoolpigeon may go on to the field of more important crimes, but he is indispensable to the police in the field of prostitution. Hopkins says:

"In enforcing the sumptuary laws especially, stoolpigeons as *agents provocateurs* seem a real necessity. . . . The stoolpigeon is a criminal, or an associate of criminals, who 'snitches' to the police. . . . These underworld sneaks are more numerous in our country because of our peculiar sumptuary laws, such laws being seldom enforceable without the use of go-betweens who masquerade as purchasers and buy the outlawed commodity. The stoolpigeon himself may be a drug addict, a 'fence,' an underworld hanger-on of any other kind."

The rotten stoolpigeon system makes for the frameup at least as easily as for law-enforcement. The informer is utterly indifferent to truth or falsity, guilt or innocence. The shameful story of the New York Vice Squad and its stoolpigeons made front pages some years ago, but Harold R. Medina didn't notice. The record is there, just the same; Hopkins analyzes it:

"In sumptuary cases, when the 'buy' is made, the detectives make the arrest. The stoolpigeon 'escapes.' The evidence in such cases may be the marked money that was passed by the *agent provocateur*. But the temptation to 'frame' a case is as great as the opportunity."

That is an understatement. The "frameup" is not just a matter of temptation and opportunity; it is inherent in the stoolpigeon system. The stoolpigeon is an *agent provocateur,* an entrapper, a man who incites the commission of the specific act of prostitution or drug sale for which the victim is then arrested. But the stoolpigeon himself, more often than not, became a police agent because he was entrapped. Police Captain Michael Fiaschetti (*You Gotta Be Rough*), has a whole chapter cynically entitled, The Making of a Stool Pigeon. He boasts that he had a private network that was "one of the biggest stoolpigeon organizations on record," but he was always eagerly working on new prospects.

"The one I wanted to get most of all was Whitey Anderson. I wanted to give him a chance to choose between taking a stretch or tipping me off to the big boys of his smart set. I grabbed Whitey and locked him up in the Tombs."

Putting Whitey in the lineup on a false charge of holdup, Fiaschetti had a friend come in from outside. " 'Pick out the one as you go in,' I instructed him, 'the little fat guy with the brown suit and spats.' You should have seen the change in Whitey's face when the supposed victim of the stickup came in, glanced at the lineup, stepped instantly to Whitey, touched his shoulder, and said: 'This is the man who robbed me.' "

In the face of this "frameup," Whitey "turned stool." And it is not just in the vice and common-crime fields that entrapment is used to make stoolpigeons. The very terminology of labor espionage suggests it: the recruiter of labor spies is called a "hooker." Clinch Calkins, in *Spy Overhead,* explains the necessity for the hooking process. The company that needs spies, or the detective agency that supplies them, requires "bona-fide employes in the plant." Even though sufficiently corrupt to accept a bribe, they would not necessarily be ready to face the full implications of a Judas-role. "Therefore the potential traitor must lose his innocence by degrees. Not until he is caught in the trap beyond self-extrication must he be allowed to learn what he is really doing."

This, too, is one of the secret facts of American life necessary to an understanding of the record of the Communist trial. The hooker who performs the "tender operation of getting a worker on the line," plays him skilfully and soon makes a full-fledged professional labor spy of him. If exposed in the plant where he is spying on his fellow-workers, the hooked spy may be transferred to another plant or himself become a professional hooker. Anyone who wants an authentic, detailed account of this dirty business, should read the account given by Red Kuhl in the record of the LaFollette Hearings (U.S. Senate) 1936-1937. Kuhl was a hooker of twenty years' experience who finally turned upon himself in disgust and became a kind of free-lance agent aiding unions to uncover spies and undo the damage they cause.

Such an awakening of conscience is extraordinary. More often, all moral sense perishes in the stoolpigeon system—at either end of it. Fiaschetti describes a triple-cross he practiced, with no indication that he is ashamed. He wanted to get a girl named Marjory to "squeal" on her lover, Bill. He decided to entice Bill with a pretty girl and let Marjory catch him in the act. The girl Fiaschetti wanted for a decoy "didn't want to do the job," but the policeman didn't hesitate to blackmail her. "She was keeping out of the way of a rough and exceedingly angry husband. She had left him and was living with the other chap. Anybody situated like that seeks to oblige, especially if you hint you might possibly say something to the husband." So she agreed, and the trap was set for Bill. For all Fiaschetti knew, Bill was "faithful devotion itself" to his girl, but "he was only human" and fell into the trap. Marjory duly "squealed"—and was thereafter in no position to refuse any dirty assignment Fiaschetti might hand her.

We have not begun to touch bottom. All this filth not only proceeds from the underworld—as even the FBI concedes—but is possible only because the police protect and foster an underworld. It is not just the informer who gets immunity; it is the underworld itself. Police departments rather openly

argue that it would break up their law-enforcement systems if they closed down dives, houses of prostitution, and known nests of crime. Fiaschetti states this with his customary brutality:

"In any big city there are many people who run rackets, gambling, policy games, disorderly and rowdy resorts, bootlegging . . . and so on. I knew of hundreds of such. . . . I was not supposed to go around squelching minor law breakers. Nevertheless, I could easily have had any of these petty offenders raided, closed up, and locked up. Instead, having something on them, I made them give me information."

Fiaschetti is a powerful witness precisely because he is not moralizing when he observes: "Here you have the real backbone of the stoolpigeon system. The great number of doubtful characters on the fringe of the underworld who engage in business more or less illegal live in constant fear of the police, and the detectives are often able to use them as stoolpigeons. They are allowed to take their large profits, and in return they squeal."

This tale of the underworld is a reminder that we have so far had only the barest glimpse of the whole complex system of lawless law-enforcement in which the stoolpigeon system is a cog. Fiaschetti did not decide to give the underworld immunity in return for services rendered; that was decided before he was born. City, state, and national political machines protect organized crime and vice, and are so closely integrated with the underworld as to be inseparable. And the corruption of these political parties and personal machines is permitted, tolerated and necessary, because still more powerful interests have need of their services. Just as the politicians and police give the petty underworld protection, so the handful of powerful industrial-financial interests that rule our country, protect and encourage the dishonest political machines and police departments. That is the class reality behind the curious trial at Foley Square.

Chapter 16

LAW AND ORDER

"But who decides when the majority wants to overthrow the government?" This question, in many forms, was put to the defense by Judge Medina. Court, prosecution and press asserted that the defense never answered the question; jury and public were supposed to draw the proper conclusions from the alleged failure to answer. When the defense put Anthony Krchmarek of Cleveland on the stand to refute the testimony of informer William Cummings, Russell Porter wrote in the *Times* of July 27:

"The witness testified that George Siskind . . . said Socialism will come in the United States when the majority 'wants' it., . . . Mr. Siskind said the small group that now controls the wealth of the country will inevitably obstruct such a change,' the witness went on. 'Therefore, if that does happen there will come a time when it will be necessary to carry out the will of the majority—and that is the dictatorship of the proletariat. He said this would be the first time the majority would come into its own and operate the wealth of the nation for the whole people, not the few.' "

But Porter found a gap in this testimony. "The witness did not quote Mr. Siskind as to who would determine what the majority 'wants,' " he observed.

Of course the witness didn't quote anyone on that point and of course the Communists had no "answer" to the question. The defense always replied, in effect, that the question was one for history to answer. The government, however,

relying upon the man-in-the-street's superficial knowledge of history, treated this as an evasion, as one more example of the concealment of "secret" and "conspiratorial" meanings. Porter went on, in the account cited above, to say that the prosecution had "introduced evidence" that Communist "professional revolutionists" were taught that the National Board, the top leadership of the Communist Party, would do the deciding. The board would hand down a " 'decision' on what the majority of the American people wants when the board decides the time is ripe for force and violence. . . ."

Defense witnesses ridiculed this idea. They denied they had ever attempted to foresee the unforeseeable. They said they had taught only general revolutionary principles: that modern conditions leave open the possibility of a peaceful establishment of Socialism, but history shows that no ruling class ever bowed to the will of a majority without first attempting to thwart the will of the majority. If the people say, "We are tired of your rule. Go away, we want to abolish the existing form of government and set up a new one," it is silly to think the old rulers will walk away. The Communists said they taught that the minority would oppose change by force and that the majority must prepare to meet violence with violence.

The reason for asking the defense the question about "who decides?" is to "establish" that the Communists plan to make an *undemocratic* decision when the time of revolution arrives. But what is a "democratic" solution? Who determined the will of the majority of the inhabitants of the thirteen colonies on the day the Founding Fathers signed the Declaration of Independence? There was certainly no referendum. And there was certainly active, even violent, opposition to a revolutionary break with Britain. The number of Loyalists was greater than is generally suggested by school textbooks, and the violence inflicted on the Loyalists by the revolutionaries is a reminder that omelettes are not made without breaking eggs. Was it "democratic" for the Founding Fathers to "hand down a decision" that the majority of the American people wanted inde-

pendence and a new government? Even today, one can answer that only by judging the record of history in the light of events that followed the Declaration of Independence. And so judging, we may say that the Founding Fathers correctly interpreted that most difficult of all things to assess—the will of the majority.

Before the event, who could have predicted *how* it would happen? Even among the ardent advocates of independence, who could have foretold the sequence of events that would produce the precise machinery—the fateful Congress influenced by the Boston Massacre—for launching and conducting the American Revolution? How much more fantastic it is to suppose the Communists have blueprinted the machinery that history will create at some unknown future time when a revolutionary crisis of unknown form shall arise. Some Marxist teachings may fairly be interpreted as denying that the time for decisive action in a revolution is determined by a referendum. Is that undemocratic? Would history have forgiven the Founding Fathers if they had held up the Declaration of Independence until it had been approved by a popular referendum—and the British had hanged all the leaders and suppressed the Revolution? The proof of the pudding is in the eating, and the proof of majority will is in the stubbornness with which the people prosecute that bitterest of all wars—a revolutionary war.

So much for force and violence by majorities or minorities in time of revolution. But one cannot hope to understand the whys and wherefores of the Communist trial unless he first confronts the problem of *everyday* violence in the society we live in. The force and violence I first encountered on the Skid Row was not an isolated or exceptional case. On the contrary, it was and is the rule; systematic violence against law-abiding men is the established and nationwide practice of law-enforcement authorities in the United States. I say this on the strength of the mountains of evidence piled up by the authoritative Wickersham Commission, whose findings I have

quoted earlier in this book. On that very Skid Row, the Commission learned, San Francisco police had stationed two detectives. They were former pugilists, and their express assignment was to spend the day beating up migratory workers or "floaters."

Reckless beating is by no means peculiar to San Francisco; it is a nationwide characteristic of American police, the Commission found. Everyone takes it for granted. In Dr. Fredric Wertham's recent study of murder, *The Show of Violence*, the noted psychiatrist tells how he was called to New York police headquarters one night by top police brass, to confer with Robert Irwin, a former patient wanted for murder. Irwin told Wertham the police had been surprisingly nice to him.

"They didn't even beat me up," he confided.

"High police officials never beat people up," Wertham replied. "They have cops for that."

Yes, they have cops for that and that's what they have cops for. The Wickersham Commission established that the norm of our daily life is the policeman who is above the law and the norm of his daily life is lawless beating, reckless seizure of citizens against whom he can neither prove nor charge any crime—kidnaping, to give it its right name—followed by unlawful imprisonment "on suspicion," forced confession, actual murder. All this in a climate that denies any rights to Negroes, the foreign-born, the poor, the workingman, the radical or suspected radical. The end is sadism, degeneracy, medieval torture and modern corruption.

As Hopkins sums it up: "Lawlessness in the enforcement of law is persistent enough to be called an American institution." So American that "it is news to most Americans that police work need not be, and in other countries relatively speaking is not, a violent profession." Not in England, not in France, not in Germany. No, and for all the millions of words about the "police state," least of all in Soviet Russia! It may go against the grain to admit it, but the true story of police-statism begins at home. Let Hopkins tell it:

"The facts, in summary, amount to this: that we only think we are living, have but the illusion we are living, under the form of criminal justice taught to every schoolchild and clearly laid down in the Constitution. . . . Individuals who are constitutionally guaranteed against violence are beaten, clubbed, slugged or shot by officers of the law, either upon arrest, or without even the pretext of arrest. Persons considered guilty of crime only in the arbitrary judgment of constables are subjected to equally arbitrary punishment, and that often of the 'cruel and unusual' sort forbidden by law. Persons entitled to liberty are deprived of that liberty with fantastic frequency, by false and unreasonable arrest. Arrested persons are further subjected to unlawful periods of incommunicado imprisonment in police jails, either, again, as punishment for assumed offenses, or while inquiry is being made as to their possible guilt; that such guilt often does not exist is shown by the extremely high percentage of releases without formal accusation of crime. The inquiry itself quite commonly takes the form of the secret trial-by-ordeal, directed to the forbidden purposes of making a lawlessly captured person incriminate himself. At times, the ordeal may reach the condition of actual torture. Finally, both to conceal the previous unlawful treatment, and to decide and sway the action of the courts of law, police commit positive or negative perjury."

Hopkins is talking about the United States of America in the twentieth century! About what is happening in every city of the United States right this minute! Let's take these things one by one, beginning with beating. Any child playing policeman will tell you by his actions that a cop is somebody who beats people. A policeman will agree; at least, he will ask why they gave him a club and a gun if they didn't want him to use them. And he uses them.

The treasury of violence amassed by the Wickersham Commission is particularly rich in stories of torture to extract confessions. Hopkins compresses untold human suffering into one paragraph: "In various cases which occurred between

1920 and 1930, the Wickersham Commission found that suspected persons had been starved, kept awake many days and nights, confined in pitch-dark and airless cells; had been beaten with fists, clubs, blackjacks, rubber hose, telephone books, straps, whips; beaten on the shins, under the knee cap (at the point of the patellar reflex), across the abdomen, the throat, the face, the head, the shoulders, above the kidneys, on the buttocks and legs; kicked on the shins, the torso and in the crotch; had had their arms twisted, their testicles twisted and squeezed; had been given tear-gas, scopolamin injections and chloroform; had been made to touch corpses and hold the hands of murdered persons in morgues; that women had been lifted by the hair; in one case, a man had been laid flat upon the floor and lifted repeatedly by his organs of sex. This in modern America between 1920 and 1930, in the fifteenth decade of the Constitution, and for the purpose of obtaining a 'voluntary' confession of guilt."

Reckless arrest, police kidnaping, is just as common as beating. It is so taken for granted that no one had done any statistical studies on it, so Hopkins compiled figures for the first three months of 1930 in Dallas, Texas. He found there had been 1823 "on suspicion" arrests, which are completely unlawful. Sixteen of the kidnapees were held more than forty-eight hours and four of them more than five days. The 1823 averaged twenty-two hours apiece—40,106 hours or almost five years stolen from them by the Dallas kidnapers. And now for the climax: not one in twenty of the victims was, in the end, charged with any offense at all!

In 1949, a less "respectable" authority made a similar count in Detroit—with a similar result. The weekly, *Michigan Worker,* found the Detroit police force had made 20,169 unlawful arrests "for investigation" in the preceding year. It will be the same this year, in San Francisco, Dallas, Detroit or New York.

Justice can only wither where the law is poisoned at the root and in the flower. Criminal conduct by the police up to

the door of the courtroom, must be followed by new crimes in the courtroom itself. There "we come to the final manifestation of police lawlessness—perjury, committed by the police in the courts of law, or caused by them to be committed by other witnesses." Aside from the outright frameup, "it seems almost a part of law enforcement to give each judge what he requires; the policeman feels the man is guilty, the judge receives the evidence and convicts." But the "evidence" has been "routine perjury," the shading and distortion of facts, the withholding of facts, the pitiful lapse of memory under cross-examination. This is so matter-of-course that you may "as well put the average prosecuting attorney on the witness stand as the average patrolman who has worked on a case," Hopkins says.

It is done, however, every day in every court, under the fiction that the policeman is neutral. Yet no informed person will believe the statement of a policeman on a stack of bibles. In 1931, an official inquiry revealed that five New York magistrates had a ten-year average of about one conviction out of every four cases (27.2 per cent). Four of the five must have had a very low average, for the fifth, Mrs. Jean Norris, had found almost nine out of ten persons haled before her, "Guilty!" Asked why she had a record of 86 per cent convictions, she said it was because she always took a policeman's word! They are sworn officers of the law, she explained. Such is public opinion of policemen, that she immediately became the butt of newspaper and magazine ridicule; not one daily, not one weekly defended her. And clearly, the sworn word of sworn officers of the law carried very little weight with the other four magistrates.

The prosecutor and policeman who will stoop to perjury, will certainly not shy away from employment of perjurers, or "routine subornation of perjury." Hopkins calls it "the process by which the stories of witnesses are gone over, often with repeated and severe grilling, and 'built up' to suit the case of the prosecution. Both detectives and prosecuting

attorneys participate in this, which is virtually third-degreeing the witnesses." When he has once been bludgeoned into making the statements planned by the police or the prosecutor, "there is the ever-ready threat of a perjury charge to hold the witness in line."

All, *all,* the government testimony in the Communist conspiracy case is of this rehearsed character, so that even the incontestable facts related by the witnesses become threads in a fabric of lies. On a lower, routine police-level, a recent novel by David Alman, *World Full of Strangers,* gives an authentic picture of this perjury-coaching. Detective McCarthy and two other officers enter a hotel-room, without warrant naturally, to make an arrest that will help their record. They want the man in the room to testify that the girl is a prostitute.

"All right, Miller, where'd you meet her?"

"Movies."

"She came over to you?"

"No. I just asked her if she wanted a cigarette."

"Don't give me that," McCarthy said angrily. "She sat down next to you and asked if you wanted to get fixed up, that right?"

"No, I just told you—"

"God damn," McCarthy shouted, "you heard me!"

"What's this?" Miller frowned. "A murder trial?"

McCarthy slapped him.

"She asked you if you wanted to get fixed up, right?"

Miller looked up. "I got nothing against the girl. What do you want?"

McCarthy slapped him again.

"Why're you doing that?" Miller asked, tears in his eyes. "Jesus, what did I do?"

McCarthy struck him in the chest with his closed fist. . . .

"You can save yourself a lot of trouble," McCarthy said. "All I want you to tell the judge is that she gave you a hustle, that's all. . . ."

In the end, the detective had his way. Even a strong man

knows he is in a trap: it is practically impossible to obtain redress for abuse by lawless policemen. Where some big public scandal forces action, the punishment of policemen is usually immoderately moderate. It has to be, for otherwise the police would abandon their lawless violence, and that is not what the men above them desire.

Police apologists generally justify their violence by the "war on crime" theory. The criminal is a dangerous enemy and the police are eternally at war with him, the theory runs. War is no place for nice courtesy and fine restraint. But the "war on crime" theory will not stand a moment's comparison with police practice, for the first thing that stands out about police violence, is that it is not exercised against the Legs Diamonds and the Al Capones. They are handled with kid gloves. Police violence "is visited, in exceedingly numerous instances, upon mere indigents and morons and vagrants and unemployed men and migratories and drug addicts and immigrants and illiterates, an appallingly numerous class in this country, cases for the hospitals and the social agencies and the educational system and the employment bureaus, but regarded everywhere by the police as their prey."

Hopkins risks confusing us by mixing the law-abiding workers and unemployed with the habitual small offenders. The latter may indeed come largely from what the social worker calls the "under-privileged classes," but they should not be confused with the class itself. It is not because they are lawbreakers that the police abuse Negroes, the unemployed, immigrants and workers in general; it is because they are Negroes, unemployed, immigrants and workers.

This form of police violence is no accident and the raid I witnessed on the Skid Row is its most typical form. There is nothing our Constitution-breaking authorities dislike so much as workingmen who assemble peaceably and discuss their problems. In today's cold-war jitters, the police are not required to, and do not, tolerate politics in the lower depths. They strike out with fist and club. And not just at the Com-

munists; not just at persons and parties opposed to the capitalist system, but at all dissenters from the present bipartisan foreign policy of the Truman Administration, notably Henry Wallace. Wallace is no Communist; he is a Rooseveltian New Dealer, a firm believer in and defender of an anti-monopoly type of capitalism. But he is an open and bold dissenter from the golden-calf-worship of the postwar years, and his public opposition to the cold war abroad and Department of Justice tyranny at home, has encouraged other dissenters. Dissent is back-talk, just what the policeman can't stand.

Of course the policeman doesn't think all that out. He doesn't know that the people he beats up on the Skid Row are "dissenters." He doesn't think at all; he acts. But he acts against those he has been taught to abuse, the classes of Americans who can be abused with impunity: the poor, the humble workingman, the Negro, the radical. He has learned by experience that he can beat them, kidnap them (arrest them without warrant and hold them indefinitely without charge), and even murder them, without consequences to himself.

The Wickersham Commission found there was (and is) a special form of police sluggery—Hopkins calls it "the street beating for 'crime prevention' purposes"—employed against the poor (who are the majority of Americans, too). Police just descend upon certain districts, especially during "crime drives," and with fist, blackjack and club, try to put the fear of God into the whole population. Needless to say, they do not do this on Park Avenue, but in Harlem; not in the Silk Stocking district but on the lower East Side, the areas in every city peopled by the workingman, the Negro, the Puerto Rican, the poor and the unprotected.

Casual street murder of a Negro in Harlem by a policeman is so common that it isn't even "news." Harlem has no rights. When Chile Acuna was testifying before Commissioner Seabury, he explained certain raids in that area. The police officers he worked with, he said, were liable to be sent back to pound a beat if they didn't keep up their record of arrests.

So when they were "short of arrests in their average, they used to go to Harlem and in Harlem they go to any colored house or colored apartment and they make any arrests at all, just because they thought colored people had less chance in court."

Yes, colored people have less chance in court. No chance, more often than not. And the white victim of unequal opportunity is not much better off. The very fact that he has been wronged is turned against him; his joblessness stamps him a "vagrant" or "floater"; his poverty, as much as his resentment, brands him "subversive" or "criminal." And the more it becomes apparent that the gorge of the peoples of the world is rising against this monstrous system of perpetual violence and perpetual oppression, the more brutal, sadistic and violent become the attempts of the ruling minority to maintain the status quo. Policemen are no longer equal to the task. The masses must be moved to violence. The stormtroopers of Hitler and the native Fascist hoodlums of Peekskill are products of the same causes and are employed for the same ends. The "legal" violence imposed on the Communists at Foley Square is of the same stamp. Violence! If you wish to understand it you must face squarely the fact of class in the United States, and the class basis of the terror in which we live today.

Chapter 17

THE SECRET OF SECRECY

Violence against the majority! Systematic, oppressive, sadistic violence! All other violence is born here. Even the murders committed by a psychopath who runs amok, are possible only against the background of social violence. No doubt mental disorder was the immediate reason for the rampage of Howard Unruh, the veteran who killed thirteen men, women and children in Camden, New Jersey, early in September 1949. But what caused that disorder to find that particular expression? In *The Show of Violence,* Dr. Wertham concludes that murder in our society is ultimately explained by a class system that rests on contempt for human life—the life, that is, of the underdog.

"The individual act of murder," he writes, "exists against a background of victimization of many people. The problem of homicide is only part of the general problem of preventable deaths." Calling attention to a study issued by the Metropolitan Life Insurance Company, in which a "subtle and highly complex" relationship between "economic considerations" and homicide is acknowledged, Dr. Wertham cites some not so subtle examples: "A German insecticide company had a monopoly on producing the gas approved for gas-chambers. One pound of this gas could kill 125 persons. The financial profits on producing the gas were 200 per cent." The gas-chamber is new, but how different is it from murder by starvation in India? From 1770 to 1900, a total of 31,500,000 people died of starvation in that tortured land. Much of that

time, exactly "forty persons owned all the shares of the East India Company and received dividends of 22 per cent per year," Dr. Wertham grimly notes.

What can be proved, he asks, by elaborate studies of the quirks in the minds of certain supposedly psychopathic murderers, in a society where presumably sane and definitely highly-educated men encourage or perpetrate such class-murders as that of Sacco and Vanzetti? And where they tolerate and justify a system of production that demands deliberate blindness to human suffering in the name of "free enterprise"? The poet Thomas Hood, sums it up: "O God! that bread should be so dear, and flesh and blood so cheap!"

You don't have to go abroad to look for mass murder by indifference. Each year in the United States, 325,000 people die for want of medical care. In 1947, 17,000 Americans were killed on their jobs in industrial accidents and one of those accidents was the Centralia mine disaster which occurred just five years after one of the miners had written to the Governor of Illinois: "Please save our lives." The politically and economically and socially powerful never waste time or money to prevent deaths that cost them nothing, so 111 men died needlessly in that mine collapse.

Violence by indifference is one side of the coin; deliberate violence by the police against the majority is the other. A society that exposes the majority to wanton violence cannot safeguard even the ruling minority from its effects. The case of James Forrestal ought to have given pause to the ruling minority. Here was one of sixty or six hundred men who rule the United States. I refer not so much to his high place in public life, as to his social and economic status in private life. President of the banking empire of Dillon, Read and Company, he was Wall Street incarnate before he became Secretary of the Navy. Subsequently he moved into the still mightier post of Secretary of the National Military Establishment—the combined armed services. He thus united in his person a great public and a great private power. That power was used to

create a hysteria that would carry us unresisting down the road to World War III. "The Russians are coming!" he screamed at us daily in black and red headlines.

Under the awful pressure he had himself created, his mind snapped. The bogey of his own manufacture became a reality to him. He leaped from his bed one night—a paranoiac Paul Revere—to run down the street in his pyjamas, screaming once more: "The Russians are coming!"

They put him in a hospital for treatment. He had all the comfort and seclusion that his public position and his private fortune could procure. But there was no refuge. The frenzy of violence he had loosed at the Russians, the Communists, and the common people of all the world overtook him. He plunged from a tower-window to violent death in the dark abyss he had prepared for the victims of his madness! He died in a trap set by the few for the many.

Is it possible that all this violence, running through our American way of life like a virus multiplying in the bloodstream, is a secret unknown to the average American? Is he equally unaware of the violence of indifference and the violence of the club? Why that cannot be so; he must know at least the fact that lawlessness is the norm of police conduct. It is the *meaning* that he misses. Knowing the fact of violence, he continues to think that the Constitution with its Bill of Rights is a description of life in our country; he knows as little about the policeman on the Skid Row as I knew when I first went there. Nor is his innocence accidental: all the powers that be have combined to conceal the truth from him and teach him falsehood in our public schools, in our newspapers, in churches and meetings of the American Legion, Chambers of Commerce and, sad to say, all too many union halls.

This is the real conspiracy, the conspiracy of the Big Lie. The conspirators cannot deny the violence all about us and the suffering it produces, but they can and do explain it away by systematic falsehood. And it is remarkable how persistent repetition of a falsehood can confuse even those who have in

their grasp the facts from which the truth might be deduced. The Wickersham Commission and its interpreter, Hopkins, provide the perfect illustration. They not only see the extent of violence in our life, but know that it contradicts all that we are taught about "the American way of life."

"The lawlessness within law enforcement, by its results, might reasonably be considered the most fundamentally subversive of all forms of lawbreaking," Hopkins writes. It subverts "the very basis of government"—respect for law—and mocks our professed standards of "Americanism" and "justice." "A word as to those standards. Every schoolchild, every candidate for citizenship, learns them by simply reading the Constitution and takes pride in the fact that this nation was the first to promulgate them in written form upon earth." And yet, says Hopkins, "if there were a general conspiracy to frustrate the working-out of those principles and do away with them at last, action to that end could be little more effectual than it is in many cities today."

Exactly! Yet Hopkins never dreams there *is* such a conspiracy! He sees the evidence of it and notes that there is no other logical conclusion, but he cannot imagine that it is so! Today, after Peekskill, when violence is becoming more and more political, when more and more openly it tends toward conscious Fascism, there is the same blindness in the face of fact. Or, more exactly, the same failure to recognize the truth because all the shapers of public opinion are busy day and night telling us it isn't so. How close a man can come to independent discovery of the truth, only to be browbeaten out of it by "respectable" authority to the contrary! Hopkins, describing the extent to which the police have instituted trial-by-beating, trial-by-kidnapping, trial-by-third-degree, for lawful court procedure, again comes within an inch of seeing the conspiracy: "The police must have secrecy or the game is up. Not only must what goes on in the sweating session be kept secret, but if possible the existence of the practice itself." Why then can't Hopkins accept the evidence of his own eyes, that

there is a nationwide conspiracy by the minority to bamboozle the majority?

Any attempt to answer that question, to open a discussion of the underlying issue, proceeds under an enormous handicap. It takes place in the framework of our peculiarly American mythology. In that mythology there is no ruling class because this is a democracy. Therefore, no matter how great the evidence that a minority controls the machinery of state and uses it to keep the majority in its "place," the fact is never acknowledged. No matter how great the evidence that the myth itself is a decisive factor in maintaining the privileges of the privileged and the complacency of the majority, the myth continues to pass for fact. To break down the inertia of habit, only a word is needed, only a phrase. Why doesn't Hopkins understand his own facts? Because to understand them, one must first ask what kind of struggle is responsible for that subversion he has described. And what kind of struggle safeguards our human rights and democratic liberties from the truly subversive? The answer is—class struggle; and those are forbidden words.

Our American mythology, refusing to acknowledge that democracy is a class system, cannot concede that the United States Constitution is itself a product of class interests set in a framework of class conflict. To say out loud that American society is a class society, is to invite violence. The myth enjoys more than the force of law in the United States; it is enforced by lawless violence. It is a secret law that insists upon discussion of domestic politics and world affairs in terms of resounding "moral" concepts instead of hard material realities. And anyone daring to go beyond those arbitrary boundaries of thought or advocacy, is automatically excluded from "respectable" society. He is a Communist, a Marxist, a heretic.

The late Charles A. Beard found that out. When he first published his "An Economic Interpretation of the Constitution," he was assailed as a "Marxist" by older, more orthodox historians. That, incidentally, was 1913, before the Russian

Revolution provided the now conventional "national security" pretext for redbaiting. Beard's simple acknowledgment of the class basis of the Constitution was his crime. He very properly insisted that he was no more a Communist than were his critics. In an introduction to the 1935 edition of his book, Beard points out that the Communists were not the first to speak of the class struggle and hence it is silly to shout "Marxist" at everyone who escapes the myth of classlessness. He wrote:

"The germinal idea of class and group conflicts in history appeared in the writings of Aristotle, long before the Christian era, and was known to great writers on politics during the middle ages and modern times. It was expounded by James Madison, in Number X of *The Federalist*, written in defense of the Constitution of the United States, long before Karl Marx was born. Marx seized upon the idea, applied it with vigor, and based predictions upon it, but he did not originate it. Fathers of the American Constitution were well aware of the idea, operated on the hypothesis that it had at least a considerable validity, and expressed it in numerous writings."

Beard had done nothing more than to expound the political philosophy of Madison, the father of the Constitution. Of course, if it is a crime simply to read the powerful works of Karl Marx—as it may well be if the present case is not otherwise decided in the high court of American public opinion—then Beard, too, was a criminal conspirator. For "at the time this volume was written," he explained, "I was, in common with all students who professed even a modest competence in modern history, conversant with the theories and writings of Marx. Having read extensively among the writings of the Fathers of the Constitution of the United States and studied Aristotle, Machiavelli, Locke and other political philosophers, I became all the more interested in Marx when I discovered in his works the ideas which had been cogently expressed in the preceding centuries. That interest was deepened when I learned from an inquiry into his student life that he himself

had been acquainted with the works of Aristotle, Montesquieu, and other writers of the positive bent before he began to work out his own historical hypothesis."

Beard had followed not Marx but Madison. Philosophically, the difference between the two men is profound, for Madison supposes wealth and poverty to be the result of differences in men's abilities; Marx explains the unequal distribution of wealth by tracing its history. Madison's theory is, in effect, a justification of privileged classes, while Marx intends his theory as a weapon in the hands of the working class to end class privilege forever. But here we are not concerned with the intent of either. All that is relevant to our purpose is that Madison sees conflicting class interests as the great reality with which the Constitution must deal. He wrote in *The Federalist:*

"From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of society into different interests and parties. . . . The most common and durable source of factions has been the various and unequal distribution of property. *Those who hold and those who are without property have ever formed distinct interests in society.*"

Yes, in the United States as in all other countries, the propertied and the propertyless are locked in class struggle. Madison continues, describing other economic interests: "Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a moneyed interest, with many lesser interests, grew up of necessity in civilized nations and divided them into different classes actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government."

Beard's summary of the whole Madisonian concept underlying our Constitution, emphatically establishes the class basis of American democracy: *"Party doctrines and 'principles' originate in the sentiments and views which the possession of various kinds of property creates in the minds of the possessors; class and group divisions based on property lie at the basis of modern government; and politics and constitutional law are inevitably a reflex of these contending interests."*

Beard calls his system, "economic determinism"; Communists employ "dialectical materialism" and "historical materialism." We need not define or explore these terms further than to note that by virtue of these different approaches, Communists profess to find a meaning in history, whereas Beard specifically declines to look for any. He writes: "It may be that some larger world-process is working through each series of historical events; but ultimate causes lie beyond our horizon." This would lead to a fatalistic acceptance of all the evils we meet, including the class violence we have encountered; yet Beard, without suggesting a remedy, does provide us with a clue to that violence and to the Communist conspiracy trial itself:

"The whole theory of the economic interpretation of history rests upon the concept that social progress in general is the result of contending interests in society—some favorable, others opposed, to change."

That is precisely the origin of the policeman's violence on the Skid Row and judicial violence in the courtroom at Foley Square. The defenders of the *status quo,* employing daily violence against the majority in defense of the privileges of the minority, must go beyond that to punish advocacy of change itself. A special form of violence must be invented for use against those who hold and teach dangerous ideas, ideas in conflict with the official mythology. The minority, the ruling class, is frightened by the rapidity of change in the world today. It resorts more and more to violence. While professing, in great hollow waves of propaganda from the advertising

agencies employed by the National Association of Manufacturers, to believe that capitalist ideology would triumph in any peaceful joust with Marxist ideology, our ruling class has been careful to pass laws making it unlawful to advocate Marxism.

A law specifically invented for that purpose and employed to prevent peaceful submission of any non-conformist theory to the judgment of the American people, must observe the pretense of respect for democracy. The trick in our time, therefore, is to cry, "Stop thief!" That is, the ruling class, practicing violence against the majority, declares that advocates of fundamental change must be suppressed because they plan to attain their ends by force. Here is how the argument runs:

"I am of the opinion that the manifesto and program of the Communist Party, together with other exhibits in this case, are of such character as to easily lead a reasonable man to conclude that the purpose of the Communist Party is to accomplish its end, namely, the capture and destruction of the state, as now constituted, by force and violence. . . .

"If those who support the Communist Party in its present declaration of principles hope for success—and I must assume that they have such hope—I cannot do otherwise than conclude that they must contemplate the employment of force and violence. In other words, I am unable to perceive how the expropriation of private property can be accomplished without the employment of forbidden instrumentalities. I say this because of the fact that up to the time of the capture and destruction of the present government its officers will be, as they now are, charged with the protection of property rights, and *I cannot imagine that* such officers and *those whose property the Communists will take, will meekly capitulate the moment the Communists demand a transference to them of all such rights.* Should such a transfer be demanded and refused, could it for a moment be supposed that the Communists, if they considered their strength sufficient, would

hesitate and seek peaceful means of persuasion? It seems to me that they would unquestionably exert whatever coercion and employ whatever force and violence was necessary to the achievement of their success."

That was the opinion of Judge John C. Knox, now Senior Judge of the Federal Court of the Southern District of New York, in a case decided in 1920. It was the opinion of many other apologists for the ruling class and defenders of the *status quo*. They worked tirelessly to make that opinion the law of the land, which would, of course, repeal the Bill of Rights. And in 1940 they finally succeeded in placing on the statute books of the United States, a law under which they could outlaw dangerous thoughts while maintaining the appearance of "due process." That law was the Alien Registration Act, otherwise known as the Smith Act, under which the defendants in this case were indicted in July 1948.

The Smith Act was sneaked past the public by parliamentary trickery, concealed by hysteria. Even Zechariah Chafee, Jr., outstanding authority on legislative and judicial attempts to curb freedom of speech and the press, thought it was just a measure for fingerprinting aliens. In his 1942 book, *Free Speech in the United States,* Chafee says of its quiet passage: "Not until months later did I, for one, realize that this statute contains the most drastic restrictions on freedom of speech ever enacted in the United States during peace."

Chafee relates how it was done. First, a bill purporting to strike only at radical aliens was introduced by Representative Howard Smith of Virginia. With legislators in a mood to pass any anti-alien measure without debate, a section applying to citizens was inserted—but only, everyone was assured, for the limited purpose of preventing tampering with the armed forces. Now the stage is set, and a thought-control amendment is tacked on and the bill is passed almost without debate.

It was Smith himself who offered the thought-control amendment to the Smith Act, the words that would later

cover the indictment of the Communist leaders. We have curbed aliens, he said, "but do you know that there is nothing in the world to prevent a treasonable American citizen from doing" the very things we forbid aliens to do. "He can advocate revolution, the overthrow of the government by force, anarchy, and everything else, and there is nothing in the law to stop it."

"The mood of the House is such," declared Representative T. F. Ford of California on July 28, 1939 in debate on Smith's bill, "that if you brought in the Ten Commandments here today and asked for their repeal and attached that request to an alien law, you could get it." So no one looked into the content of the bill, the press virtually ignored it, and it became law on June 28, 1940.

"Here at last," wrote Professor Chafee in 1942, "is the Federal peacetime sedition law which A. Mitchell Palmer and his associated patrioteers tried to scare the country into passing twenty years ago—without success. Not a spark of evidence was introduced in committee or in Congress to show any more need for such a Federal statute now than in 1920. . . . The plain reason for it is, that the persons and organizations who have been hankering for such a measure during the last two decades took advantage of the passion against immigrants to write into an anti-alien statute the first Federal peacetime restrictions on speaking and writing by American citizens since the ill-fated Sedition Act of 1798."

History warns that there is no limit to the powers that can be exercised under such sedition laws, or speech-restriction measures. Under the Espionage Act and various state measures of World War I, the United States experienced several years of thought control. The illegal mass raids ordered by Attorney-General Palmer and carried out by his assistant, J. Edgar Hoover, were accompanied by shameful court decisions permitting their reign of political terror. Those decisions were certain, as Chafee noted, to "serve as precedents

for the construction" of Section II* of the Smith Act. For "The truth is that the precise language of a sedition law is like the inscription on a sword. What matters is the existence of the weapon. Once the sword is placed in the hands of the people in power, then, whatever it says, they will be able to reach and slash at almost any unpopular person who is speaking or writing anything that they consider objectionable criticism of their policies."

All pretense of restraint is abandoned in the use of the sword of sedition. Look how the reckless blade has cut away the principles of due process in the Communist conspiracy case:

First, an Attorney-General, a Cabinet officer of the United States Government, having previously sworn to uphold the Constitution, "declared war on Communism" and set out to find a way of jailing the Communists in spite of the Constitution.

Second, for this purpose he impanelled a Special Grand Jury, in an atmosphere—created beforehand—that would render calm consideration of evidence highly improbable. To make assurance doubly sure, Grand Juries were hand-picked in that district. A restrictive class-system of selection had been deliberately instituted in 1937 or 1938 by that same Judge Knox who had found Communism illegal in 1920.

Third, that same Judge Knox now had and exercised the power to choose an "impartial" judge to try a case about which he, Knox, was not in the least impartial.

Fourth, he chose Judge Medina, who had been appointed to the bench in 1947 by President Truman on the recommendation of Attorney-General Tom Clark!

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* See Appendix for these sections as renumbered in U.S. Code.

Chapter 18

'COMMUNIST' MEANS YOU

And so the verdict of "Guilty," formally delivered just about noon of October 14, 1949—and immediately followed by contempt sentences against all the defense lawyers—was, in effect, determined before ever the trial began. And before ever the trial began, the historic consequences of such a verdict were clear to men who had studied history or seen it enacted in our time. Certainly the verdict and its consequences were foreseeable one year before the event, in October 1948, when the telephone rang in the Detroit home of George W. Crockett, a Negro lawyer.

It was Maurice Sugar, Mr. Crockett's associate, calling from New York. The call caught Mr. Crockett, paint-brush in hand, on a ladder in his living-room. As he came down to answer the phone, his mind was on other jobs that needed doing around the house. He not only was not thinking about the Communist trial, but had not thought about it. Yet against his own background he could recognize the dangerous principles of thought-control and political oppression when he saw them. That telephone call was therefore destined to change the whole course of his life, for Mr. Sugar had called to invite him to join the defense in the Communist conspiracy case!

Mr. Crockett said, "No," politely. He had never opened a Marxist book in his life; he doubted his competence; he named several other Negro lawyers more suitable, in his opinion. But he agreed to give it some thought before making his negative final. Ninety minutes of thought and discussion brought him

back to the telephone. To understand those ninety minutes, we must look at Mr. Crockett's background.

Having entered practice in Jacksonville, Florida, in 1934, he had gone to Washington in 1939 to serve first in the Department of Labor and later on the President's Fair Employment Practices Committee (FEPC). Some of his work attracted national interest. In 1943, when the Philadelphia Traction Company was refusing, despite the manpower shortage, to employ Negroes above the rank of porter, Crockett prosecuted the case before the FEPC. His suggested findings became the ultimate court order in the case, an order President Roosevelt later sent the Army to enforce. Articles Crockett wrote in law journals were picked up by courts in Georgia and Louisiana—the empire of white supremacy—which did not know they were borrowing the arguments of a Negro! As a result of his reputation and his own thinking, he moved on from government service to the labor field in 1944. He founded the Fair Practices Committee of the CIO United Auto Workers and was its executive director from 1944 to 1946; in 1947 he became administrative assistant to the international secretary of the union.

Crockett's private life was as solid and conservative as his professional life. He was devoted to his three children and proud of his wife, Ethelene, who had completed her study and taken the degree of Doctor of Medicine after the birth of their third child. His favorite occupation was to putter around the house. And he found time to write a weekly labor column for the Detroit Negro weekly, the *Michigan Chronicle.*

To enter the Communist case was to risk all this. Friends, dropping in soon after the call from New York, pointed that out. A friend with a strong anti-Communist bias, while not challenging the right of Communists to competent counsel, or of non-Communist lawyers to defend Communists without fear of reprisal, argued that, in effect, there *would* be reprisal.

"This is an opportunity, it's true," he told Crockett, "for you to practice the kind of law you're prepared to practice.

But I'd hate to see you go into it. Considering the present temper of the UAW, your usefulness would be impaired and that would be a loss to the UAW and to the whole trade-union movement."

This argument convinced Crockett—in the opposite sense! As he told the jury in summation a year later, he had read about the indictment in the papers. "And where you rely on newspaper comment to tell you about the Communist Party, you are likely to be misled." From the papers he had got the idea that the defendants were charged with conspiring to overthrow the government. But now, studying the actual indictment, discovering that "nowhere does it allege a single act done by these defendants in pursuance of their alleged conspiracy," learning that, in effect, it indicted the 60,000 to 80,000 American Communists and would go on from there to make "co-conspirators" of all who failed to meet the anti-Communist standards of the witch-hunters, he at once understood the dangerous potential of the case. No acts being charged, the indictment necessarily pursues thoughts, beliefs, teachings, he explained to his friend.

"If this case is lost," he reasoned aloud, "the UAW soon won't need me or anybody else. There won't be any UAW!"

He convinced his friend, and in the process convinced himself. So it was that ninety minutes after the first call, he was at the telephone again, informing Maurice Sugar that he would join trial counsel. He became attorney for Carl Winter, Detroit Communist leader with whom he had publicly debated political differences just three months earlier. Near the close of the case, I asked him, in an interview, if he had ever had occasion to regret his decision.

"Absolutely not," he replied. "I am proud to be associated with the case."

Proud because he was defending something more than eleven men, he held. He showed me a letter he had written to the *Detroit News* stating "that this indictment and trial of the Communist Party and its leaders is a step—a cleverly con-

cealed step—which if unchecked now can and will lead our country to Fascism and war." The newspaper, which had accused defense counsel of obstructing justice, did not, it goes without saying, publish Crockett's reply, that being the way of our "free press." And this one-sided treatment of the case by the press was so nearly uniform that it has determined the state of public opinion about the issues in the case.

Following the verdict and its accompanying contempt sentences for the lawyers, the bulk of the press hailed the conviction and published not a word about the real political significance of the case. It reported with approval Judge Medina's charges of a conspiracy by the lawyers; it credited the Judge with "saintly patience"; it found his charge to the jury a miracle of even-handed justice and the whole trial an inspiring example of American fair play. Let us give this press clamor and the trial behind it, the name they deserve: fraud!

A foul fraud; a double fraud. It is a fraud to present the trial as fair in any respect; to say that the defendants ever had a chance, that their lawyers were ever permitted to perform their duties or exercise their rights. But it is a worse fraud to pretend that this trial and verdict affect only the eleven defendants. It takes sheer brass to deny that the intent is to outlaw the Communist Party and thereby to reach millions of people who are not Communists. It is fraud to deny that this trial lessens your stature and threatens the very foundations of the Republic.

Neither the role of the press nor the role of the courts is wholly new to me. I have been a newspaperman too long to have any illusions about the press. For the rest, I was in Hitler's Germany for a short time, and I have been in the Clerical-Fascist Spain of Gil Robles and Lerroux (1933-1936) and in Portugal of the Fascist *Novo Estado*. The things happening here are shocking not because they are new but because they are Fascist; they are sickening because they come enveloped in a sticky wrapper of hypocrisy that makes them even more unclean than they were in Europe.

Consider the fraud of the "fair trial." I have tried to show the peculiar nature of the case, making for combat in the courtroom. But I have hardly touched the long preliminary proceedings that bear on this issue. The pre-trial record running to almost five thousand pages, is completely independent of the sixteen-thousand page record of the trial itself. Most of that pre-trial record consists of the evidence and argument submitted by the defense in support of its charge that the jury system in the Federal Court in New York is a class system. The record even that early shows Judge Medina treating the defense lawyers roughly, charging them with bad faith, implying a virtual lawyers' conspiracy against him.

The fact is that the defense charges against the Grand Jury system not only were proved to the hilt but did not require proof! The picking and packing of the district juries and Grand Juries by order of Judge Knox is a matter of record, confirmed by Judge Knox even when called as a witness by the defense in the challenge proceeding. The record shows—and he does not deny—that he picked a jury commissioner for his "good business and social connections" and a Deputy Jury Clerk with "thorough practical knowledge of the social, racial, and economic groups of New York City and their geographic distribution." The record shows they then proceeded to build up a list of "qualified" jurors by eliminating the "social, racial and economic groups" they didn't like, and concentrating on Yale, Harvard, Princeton graduates, residents of the silk-stocking district and so on. They didn't like the unemployed and housewives, for instance. A 1941 United States Government study of Knox's methods, openly described a quota system as follows: "About 2 per cent of the names in the wheel are of the unemployed or retired, 88 per cent are business or professional men, and ten per cent are women." At the trial, in answer to a question by Judge Medina, Judge Knox said that after he had allowed relief workers to serve on juries during the depression, "I had two or three experiences in cases that were tried before me where I felt that their feelings towards

the government as a whole and towards wealth as a whole and towards society as a whole was not good, and so I then asked that a number of them be eliminated."

In short, Judge Knox ordered the poor eliminated in favor of "men of substance," men with a bias toward wealth and privilege. The record shows he got them. Yet at the end of the challenge, Medina was not ashamed to say: "Not only have the defendants failed to prove this charge [of wilful, deliberate exclusion] but the evidence, largely adduced by them, conclusively refutes it." Later he called the whole challenge "a colossal bluff"! And this was the mood in which the trial proper began!

From the pre-trial record, it clearly appears that Judge Medina was already convinced that the defendants and their lawyers were misbehaving according to plan. In the later language of his contempt decree, he found that they had entered into an agreement "in a cold and calculating manner" to cause "such delay and confusion as to make it impossible to go on with the trial"; to provoke incidents in the hope of forcing a mistrial, and even to try to impair the health of the Judge "so that the trial could not continue." Now I recall a typical day in court when Judge Medina whipped himself up into a fury against defendant Benjamin Davis and the defense in general, without the slightest provocation. A little later, he used patronizing language to Mr. Davis calculated to provoke the defendant, a Harvard law graduate and New York City Councilman, into a sharp reply ("Now be a good boy," he said, shaking a finger at the Negro leader; "I will not be a good boy," thundered Davis, resentful of the "Uncle Tom" role assigned him by the Court). And this is the kind of thing relied upon by Medina in his whole contempt finding; he cited it (as if it reflected credit upon himself) in denying Davis the right to make his own summation, and on this basis he described Davis as of "violent disposition"—publicly, on the very eve of the verdict.

But let us assume that the defense was at fault in every

instance. Assume that Judge Medina's constant rebukes and prejudicial rulings were forced by the conduct of the defense, and that he had reluctantly come to the conclusion that the defense was misbehaving by deliberate plan. Yet having come to this conclusion before the trial itself began, before selection of a jury began, why did he insist upon remaining in the case? How could the defense receive a fair trial from a judge who felt himself constrained to curtail the rights of defense counsel from the very beginning of the trial proper, on the basis of their alleged misconduct *before the trial*? I will answer my own questions: from the record, it is apparent that Judge Medina no more intended the defendants to have a fair trial than Judge Webster Thayer intended Sacco and Vanzetti to have a fair trial. The case against the lawyers is a monstrous fraud built up by months of play-acting, with the powerful assistance of the press.

Far more dangerous is the second fraud: the pretense that this is a conviction of just eleven defendants as individuals. Hitler hasn't been dead long enough to make that stick. The trial of leading Communists in Germany on a charge of burning down the Reichstag was the pretext not just for hunting down Communists but for liquidating the Weimar Republic. The International Military Tribunal that tried the Nazi war criminals at Nuremberg, said this:

"On the 28th February, 1933, the Reichstag building in Berlin was set on fire. This fire was used by Hitler and his Cabinet as a pretext for passing on the same day a decree suspending the constitutional guarantees of freedom." (*Nazi Conspiracy and Aggression, 1947.*)

Is it possible to believe that this time it will be different, this time only the Communists will suffer? No witch-hunt is confined to witches; there being no witches, witches have to be invented. In the context of today's events, "Communist" means you. I heard a recording last night of the riot-incited hoodlums of Peekskill, screaming, "*Go back to Russia you*

white niggers! You Jew bastards." Do you really think *you* are safe when gangsters are officially turned loose?

I live in Sunnyside, a New York City community. Defendant Robert Thompson lives a few blocks away and his small daughter and my son attended the same nursery school a few years ago. On the night of November 20, 1948, a shady character named Robert Burke, recently employed as a labor-spy on the waterfront, forced his way into Thompson's home and tried to attack Thompson's daughter. Arrested, Burke admitted to police that he went to Thompson's home to make trouble, but he was not tried for breaking into his home or for attempted rape. He was convicted of a misdemeanor. The case was then reopened on motion of the prosecutor, and Burke went scot-free.

These are no casual incidents. In the Germany of rising Nazidom, any Communist brought before a court was guilty, while no tool of the Fascists could be convicted of a crime. Fascism deliberately turns a whole nation over to hoodlums, sex maniacs, sadists, perverts who collect lampshades made of the skins of concentration-camp inmates selected for their interesting tattoo-marks. Why should you think your own skin is safe?

And so I conclude. I have tried to tell you truthfully what happened at Foley Square, but that does not mean I have tried to be "objective," *i.e.*, indifferent to this conflict that involves my freedom and yours, my life and yours. No, I have not tried to tell a story without a purpose. I apologize for the shortcomings of a necessarily hasty attempt to squeeze the essence of a huge and baffling record into these few pages. I apologize for my inadequate showing of the meaning of the trial in the context of history. But I do not apologize for trying to "incite" you to "overthrow" this verdict.

What the American people do now will determine whether or not we are to pass through the Hell of Fascism. There are, there no doubt always will be, Americans who think it can't happen here. And certainly there are great differences between

German Fascism and our native brand: the Nazis at least felt it necessary to have a burning building as a pretext for suspending the Constitution. Our cold warmongers manufactured an occasion out of thin air. No one tried to burn down the White House in the spring and summer of 1945. A discussion, published in newspapers and magazines, took place within the Communist Party of the United States; a meeting was held at Madison Square Garden. That is all the force and violence the government ever proved in the trial at Foley Square. That is all the justification offered for this dangerous decision.

Will the Supreme Court overthrow it? This is not a moving picture: we cannot sit back and wait with the assurance of a happy ending. We have the power to guide and instruct the Supreme Court. We have the power to determine what must now happen in the intensified struggle between Fascism and Democracy in these United States. Silence can be a political act, too. Silence in the face of this decision would be an invitation to Fascism. The verdict at Foley Square is not the private affair of the Communists; it is the business of every man on earth. It is, above all, your responsibility and mine: we are at an American crossroads.

ANNE J. WILSON
714 North Mentor Avenue
PASADENA 6, CALIFORNIA

APPENDIX

I. THE CONSPIRACY INDICTMENT

The Grand Jury charges:

1. That from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, WILLIAM Z. FOSTER, EUGENE DENNIS, also known as Francis X. Waldron, Jr., JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES, also known as Israel Regenstreif, IRVING POTASH, GILBERT GREEN, CARL WINTER, and GUS HALL, also known as Arno Gust Halberg, the defendants herein, unlawfully, wilfully and knowingly, did conspire with each other, and with divers other persons to the Grand Jury unknown, to organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence, which said acts are prohibited by Section 2 of the Act of June 28, 1940 (Section 10, Title 18, United States Code), commonly known as the Smith Act.

2. It was part of said conspiracy that said defendants would convene, in the Southern District of New York, a meeting of the National Board of the Communist Political Association on or about June 2, 1945, to adopt a draft resolution for the purpose of bringing about the dissolution of the Communist Political Association, and for the purpose of organizing as the Communist Party of the United States of America a society, group, and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

3. It was further a part of said conspiracy that said defendants would thereafter convene, in the Southern District of New York, a meeting of the National Committee of the Communist Political Association on or about June 18, 1945, to amend and adopt said draft resolution.

4. It was further a part of said conspiracy that said defendants would thereafter cause to be convened, in the Southern District of New

York, a special National Convention of the Communist Political Association on or about July 26, 1945, for the purpose of considering and acting upon said resolution as amended.

5. It was further a part of said conspiracy that said defendants would induce the delegates to said National Convention to dissolve the Communist Political Association.

6. It was further a part of said conspiracy that said defendants would bring about the organization of the Communist Party of the United States of America as a society, group, and assembly of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and would cause said Convention to adopt a Constitution basing said Party upon the principles of Marxism-Leninism.

7. It was further a part of said conspiracy that said defendants would bring about the election of officers and the election of a National Committee of said Party, and would become members of said Party, and be elected as officers and as members of said National Committee and the National Board of said Committee, and in such capacities said defendants would assume leadership of said Party and responsibility for its policies and activities, and would meet from time to time to formulate, supervise, and carry out the policies and activities of said Party.

8. It was further a part of said conspiracy that said defendants would cause to be organize Clubs, and District and State units of said Party, and would recruit and encourage the recruitment of members of said Party.

9. It was further a part of said conspiracy that said defendants would publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers advocating the principles of Marxism-Leninism.

10. It was further a part of said conspiracy that said defendants would conduct, and cause to be conducted, schools and classes for the study of the principles of Marxism-Leninism, in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

In violation of Sections 3 and 5 of the Act of June 28, 1940 (Sections 11 and 13, Title 18, United States Code), commonly known as the Smith Act.

II. THE MEMBERSHIP INDICTMENT

The Grand Jury charges:

1. That from on or about July 26, 1945, and continuously thereafter up to and including the date of the filing of this indictment, the Communist Party of the United States of America has been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

2. That from on or about July 26, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, BENJAMIN J. DAVIS, JR.,* the defendant herein, has been a member of said Communist Party of the United States of America, the defendant well knowing during all said period that said Communist Party of the United States of America was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

In violation of Sections 10 and 13, Title 18, United States Code.

III. EXCERPTS FROM THE SMITH ACT

(These are the section numbers in the U.S. Code as revised in 1948.)

Sec. 10. [Subversive activities]: advocating overthrow of government by force.

(a) It shall be unlawful for any person—

(1) to knowingly or wilfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

* Each of the eleven defendants is similarly indicted individually.

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliated with, any such society, group, or assembly of persons, knowing the purposes thereof.

(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the government of any political subdivision of any of them. June 28, 1940. c. 439, Title I 2, 54 Stat. 671.

Sec. 11. Attempting or conspiring to commit [the above] prohibited acts.

It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions [above].

Sec. 13. Any person who violates any of the provisions [above] shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than ten years, or both.

IV. THE SCHNEIDERMAN CASE

Excerpts from the 1943 Supreme Court opinion in the case of William Schneiderman (320 U.S. 118).

". . . Political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written. Philosophies cannot generally be studied *in vacuo*. Meaning may be wholly distorted by lifting sentences out of context, instead of construing them as part of an organic whole."

The Court then considered *The Communist Manifesto, State and Revolution,* and *Foundations of Leninism* (under its earlier title, *The Theory and Practice of Leninism*), all introduced by the government, and said:

"A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open."

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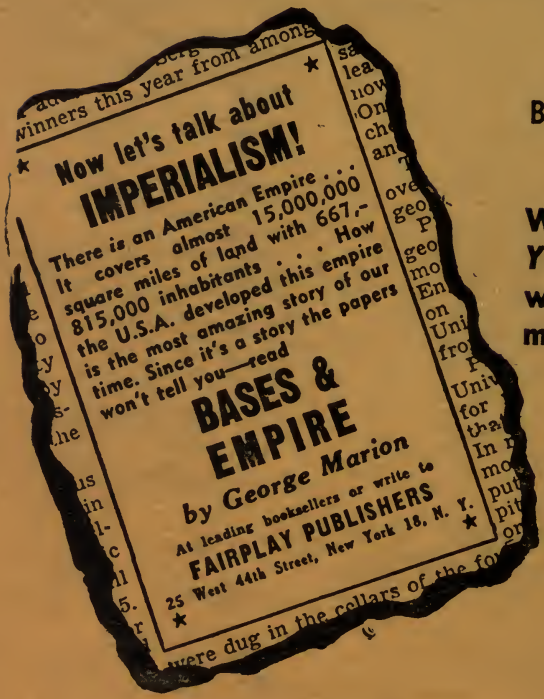

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